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असाधारण
EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित
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नई दिल्ली, सोमवार, जुलाई 1, 2024/आषाढ़ 10, 1946

No. 2388]

NEW DELHI, MONDAY, JULY 1, 2024/ASHADHA 10, 1946

गृह मंत्रालय

अधिसूचना

नई दिल्ली, 1 जुलाई, 2024

का.आ. 2517(अ).—केंद्रीय सरकार ने, विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) (जिसे इसमें इसके पश्चात उक्त अधिनियम कहा गया है) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की भारत के राजपत्र, असाधारण, भाग-II, खण्ड -3, उपखंड (ii), तारीख 27 दिसंबर, 2023 में प्रकाशित तारीख 27 दिसंबर, 2023 की अधिसूचना संख्यांक का.आ. 5462(अ) (जिसे इसमें इसके पश्चात उक्त अधिसूचना कहा गया है) द्वारा मुस्लिम लीग जम्मू कश्मीर (मसरत आलम गुट) (एमएलजेके-एमए) को विधिविरुद्ध संगम के रूप में घोषित किया था;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 कि उपधारा (1) के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के गृह मंत्रालय की तारीख 15 जनवरी, 2024 की अधिसूचना संख्यांक का.आ. 167(अ) द्वारा विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण (जिसे इसमें इसके पश्चात उक्त अधिकरण कहा गया है) का गठन किया था, जिसमें दिल्ली उच्च न्यायालय के न्यायाधीश न्यायमूर्ति श्री सचिन दत्ता थे;

और, केंद्रीय सरकार ने उक्त अधिनियम की धारा 4 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, इस न्यायनिर्णयन के प्रयोजन के लिए कि क्या मुस्लिम लीग जम्मू कश्मीर (मसरत आलम गुट) (एमएलजेके-एमए) को

विधिविरुद्ध संगम के रूप में घोषित किए जाने का पर्याप्त कारण था या नहीं, तारीख 24 जनवरी, 2024 को उक्त अधिकरण को उक्त अधिसूचना निर्दिष्ट की थी;

और, उक्त अधिकरण ने, उक्त अधिनियम की धारा 4 की उपधारा (3) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उक्त अधिसूचना में की गई घोषणा की पुष्टि करते हुए तारीख 22 जून, 2024 को एक आदेश पारित किया था;

अतः, अब, केंद्रीय सरकार उक्त अधिनियम की धारा 4 की उपधारा (4) के अनुसरण में, उक्त अधिकरण के आदेश को प्रकाशित करती है, अर्थात्:-

“

---: अधिकरण का आदेश अंग्रेजी भाग में छपा है :---

(न्यायमूर्ति सचिव दत्ता)
विधिविरुद्ध क्रियाकलाप (निवारण) अधिकरण”

[फा. सं. 14017/47/2024-एन.आई.-एम.एफ.ओ.]

अभिजीत सिन्हा, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 1st July, 2024

S.O. 2517(E).— Whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) (herein after referred to as said Act), declared the Muslim League Jammu Kashmir (Masarat Alam faction) (MLJK-MA) as an unlawful association *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 5462 (E), dated 27th December, 2023 (hereinafter referred to as said notification) published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated 27th December, 2023;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 5 read with Sub-section (1) of Section 4 of the said Act constituted the Unlawful Activities (Prevention) Tribunal (hereinafter referred to as the said Tribunal) consisting of Justice Sachin Datta, Judge, High Court of Delhi *vide* notification of the Government of India in the Ministry of Home Affairs number S.O. 167 (E), dated 15th January, 2024 published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii) dated 15th January, 2024;

And, whereas, the Central Government in exercise of the powers conferred by sub-section (1) of section 4 of the said Act referred the said notification to the said Tribunal on 24th January, 2024 for the purpose of adjudicating whether or not there was sufficient cause for declaring the Muslim League Jammu Kashmir (Masarat Alam faction) (MLJK-MA) as an unlawful association;

And, whereas, the said Tribunal in exercise of the powers conferred by sub-section (3) of section 4 of the said Act, passed an order on 22nd June, 2024, confirming the declaration made in the said notification;

Now, therefore, in pursuance of sub-section (4) of section 4 of the said Act, the Central Government hereby publishes the order of the said Tribunal, namely :-

"UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL,

NEW DELHI

Date of Decision: June 22, 2024

IN THE MATTER OF :

Gazette Notification No. S.O. 5462(E), dated 27th December, 2023 declaring the Muslim League Jammu Kashmir (Masarat Alam Faction) [MLJK-MA] as unlawful association under the Unlawful Activities (Prevention) Act, 1967.

AND IN THE MATTER OF:

Reference under sub-section 1 of Section 5 read with sub-section 1 of Section 4 of the Unlawful Activities (Prevention) Act, 1967 made to this Tribunal by the Government of India through Ministry of Home Affairs vide Gazette Notification No. S.O. 167(E), dated 15th January, 2024.

Present: Ms. Aishwarya Bhati (ASG) along with Mr. Rajat Nair, Mr. Jay Prakash Singh, Ms. Priyanka Dalal, Mr. Annirudh Sharma, Mr. Dhruv Pande, Mr. Navanjay Mahapatra, Mr. Bhuvan Kapoor, Ms. Poornima Singh, Ms. Manisha Chava, Mr. Rustam Singh Chauhan, Mr. Abhijeet Singh and Mr. O. P. Singh, Advocates for the Union of India.

Mr. Parth Awasthi, Advocate with Ms. Deepika Gupta, Advocate for Union Territory of Jammu & Kashmir.

Ms. Warisha Farasat, Mr. Aman Naqvi and Ms. Mreganka Kukreja, Advocates for Masarat Alam / Muslim League Jammu Kashmir (Masarat Alam Faction)

Mr. Manoj Kumar Singh, Asstt. Director and Mr. Sameer Shukla,
Asstt. Section Officer, Ministry of Home Affairs.

Mr. Sanjay Pokhriyal, Registrar, Unlawful Activities (Prevention) Tribunal.

Mr. Sunil Dutt, Deputy Registrar, Unlawful Activities (Prevention) Tribunal.

Mr. Himanshu Goel and Mr. Saksham Sethi, Law Researchers.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

1. This order answers reference under Section 4(3) read with Section 3(3) of the Unlawful Activities (Prevention) Act, 1967 (hereinafter referred to as the 'Act' or 'UAPA', for short) made to this Tribunal constituted *vide* Gazette Notification No. S.O. 167(E), dated 15th January, 2024 under Section 5(1) read with Section 4(1) of the Act by the Government of India, Ministry of Home Affairs, for adjudicating whether or not there is sufficient cause for declaring the Muslim League Jammu Kashmir (Masarat Alam Faction) ('MLJK-MA' or 'association' in short) as an "unlawful association".

I. THE NOTIFICATION

2. The Central Government published Gazette Notification (extra-ordinary) No. S.O.5462(E), dated 27th December, 2023 in exercise of powers conferred under Section 3(1) of the Act and declared **MLJK-MA** to be an "unlawful association". A copy of the said notification has been sent to this Tribunal, as contemplated under Rule 5(i) of the Unlawful Activities (Prevention) Rules, 1968 ("UAP Rules" in short). The said notification dated 27th December, 2023 reads as under:-

"MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 27th December, 2023

S.O. 5462(E)-Whereas, the Muslim League Jammu Kashmir (Masarat Alam faction) (hereinafter referred to as the MLJK-MA), chaired by Masarat Alam Bhat is known for its anti-India and pro-Pakistan propaganda;

And, whereas, the objectives of MLJK-MA are to get freedom of Jammu and Kashmir from India so as to realize the merger of Jammu and Kashmir with Pakistan and establish Islamic rule in Jammu and Kashmir;

And, whereas, the members of the MLJK-MA have been indulging in the secessionist activities in the Jammu and Kashmir;

And, whereas, the leaders and members of the MLJK-MA have been involved in raising funds through various sources including Pakistan and its proxy organizations or perpetrating unlawful activities, including supporting terrorist activities, sustained stone-pelting on Security Forces in Jammu and Kashmir;

And, whereas, the MLJK-MA and its members by their activities show sheer disrespect towards the constitutional authority and constitutional set up of the country;

And, whereas, the MLJK-MA and its leaders and members, particularly its Chairman Masarat Alam Bhat, have been indulging in unlawful activities, which are prejudicial to the integrity, sovereignty, security and communal harmony of the country,

And, whereas, there had been a number of inputs showing linkages of the MLJK-MA with banned terrorist organisations;

And, whereas, the MLJK-MA and its members have been involved in supporting terrorist activities with an intent to create a reign of terror in the country, thereby endangering the security and public order of the State, and its anti-national activities also show disrespect and disregard to the constitutional authority and sovereignty of the State, hence an immediate and prompt action is required against the organization;

And, whereas, the Central Government is of the opinion that if there is no immediate curb or control of unlawful activities of the Muslim League Jammu Kashmir (Masarat Alam faction), it will use this opportunity to –

- (i) *continue with the anti-national activities which are detrimental to the territorial integrity, security and sovereignty of the country;*
- (ii) *continue advocating the secession of Jammu and Kashmir from the Union of India while disputing its accession to the Union of India; and*
- (iii) *continue propagating false narrative and anti-national sentiments among the people of Jammu and Kashmir with the intention to cause disaffection against India and disrupt public order;*

And, whereas, the Central Government for the above-mentioned reasons is firmly of the opinion that having regard to the activities of the Muslim League Jammu Kashmir (Masarat Alam faction), it is necessary to declare the Muslim League Jammu Kashmir (Masarat Alam faction) as an 'unlawful association' with immediate effect;

Now, Therefore, in exercise of the powers conferred by sub-section (1) of the section 3 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), the Central Government hereby declares the Muslim League Jammu Kashmir (Masarat Alam faction) as an unlawful association;

The Central Government, having regard to the above circumstances, is of firm opinion that it is necessary to declare the Muslim League Jammu Kashmir (Masarat Alam faction) as an 'unlawful association' with immediate effect, and accordingly, in exercise of the powers conferred by the proviso to sub-section (3) of section 3 of the said Act, the Central Government hereby directs that this notification shall, subject to any order that may be made under section 4 of the said Act, have effect for a period of five years from the date of its publication in the Official Gazette."

3. As can be seen, the notification also enumerates the reasons/ circumstances, as contemplated under proviso to Section 3(3) of the Act, for declaring the association as unlawful, with immediate effect.

II. THE BACKGROUND NOTE.

4. Along with the reference to this Tribunal under Section 4 of the UAPA, the Central Government has submitted and filed before this Tribunal a background note, as contemplated under Rule 5(ii) of the UAP Rules, 1968.

5. The background note states that the Muslim League Jammu Kashmir/MLJK was formed in 1982 by Mohammad Altaf Khan @ Azam Inquilabi and became a constituent of the All Party Hurriyat Conference (APHC), when the latter was formed in 1993. At that point, the MLJK was led by Mushtaq-ul-Islam @ Goga. Masarat Alam, a hard-core pro-Pak activist, joined the organization in 1998 at the insistence of Goga. Later, after the split of APHC in 2003, one faction of MLJK remained with Mirwaiz (APHC-A) and the other led by Masarat Alam went with SAS Geelani (APHC-G). They came to be known as Muslim League Jammu Kashmir (Masarat Alam). It is also to be mentioned that before joining Muslim League Jammu Kashmir, Mrasrat Alam had joined militant outfit Hizbulia during 1990 for which he was arrested twice in 1990 and in 1993.

6. The Muslim League Jammu Kashmir (Masarat Alam faction)/MLJK-MA, chaired by Masarat Alam Bhat is known for its anti-India and pro-Pakistan propaganda. The objectives of MLJK-MA are to separate Jammu and

Kashmir from India so as to realize the merger of Jammu and Kashmir with Pakistan and establish Islamic rule in Jammu and Kashmir. The members of the MLJK-MA have been indulging in the secessionist activities in the Jammu and Kashmir.

Leadership:

7. The details of important MLJK-MA, office bearers and leaders are given as under:-
1. *Mohd. Qasim Faktoo (Amir Muslim League), Patron, serving Life Imprisonment at Srinagar Jail.*
 2. *Masarat Alam Bhat, Chairman, currently lodged in Tihar Jail, New Delhi.*
 3. *Abdul Ahad Parra, Acting Chairman*
 4. *Mohd. Rafiq Ganai, General Secretary, currently lodged in Central Jail, Anantnag*
 5. *Farooq Ahmed Bhat @ Farooq Towheedi, General Secretary*
 6. *Sheikh Abdul Mateen, Pak/PoK based representative*
 7. *Mohd. Akram Najar, Ex-Provincial President*
 8. *Feroz Ahmad Khan, Ex-Vice Chairman and ex-Spokesperson*
 9. *Mohd. Yusuf Mir, Former Vice President*
 10. *Asadullah Parrey, former District President Bandipore, released from jail on 27.05.2022*
 11. *Ghulam Nabi Malik @ Saddam, Public contact department*
 12. *Khazar Mohd. Ganai, Kupwara District organizer*
 13. *Mohd. Hamza Mir, District Secretary*
 14. *Abdul Rashid Dar, Member of MLJK-MA*
 15. *Showkat Hakeem, Deputy Spokesperson, currently in Rajouri Jail*
 16. *Sajad Ahmad Navoo, Worker, released from jail on 10.05.2023*
 17. *Bashir Ahmad Bhat @ Bashir Budgami, Office Superintendent*
 18. *Rafiq Raina, District President, Budgam*
 19. *Mohd. Aslam Rather, Executive Member*

Activities supporting terrorists:

8. The background note also mentions a number of incidents showing linkages of the MLJK-MA with terrorist organizations. It states that Masarat Alam and Abdul Ahad Parra (Acting Chairman, MLJK-MA) were in touch with Hafiz Sayeed and Iftikhar Hyder Rana of the Jamaat-ud-Dawa as well as Syed Salahuddin (Hizbul Mujahideen chief). Some highlighted instances are as under:

- a) On 07.10.2015, Altaf Ahmed Dar (top CI operative of JK Police) was killed, and ML leaders Showkat Hakeem (President, North Zone) and Mehrajuddin Nanda were arrested for his killing during an encounter with banned terrorist organization Lashkar-e-Taiba (LeT) terrorist Abu Qasim, (Divisional commander, LeT, Valley).
- b) A delegation of MLJK-MA visited Chinnigam, Kulgam to pay tribute to killed terrorist Ayatullah who was killed on 25.05.2015 in an encounter by Security Forces (SFs). On that occasion, it was said that they (the terrorists) were fighting to end the illegal occupation of India and their only aim was to achieve separation/secession for Islam.
- c) In another instance, members/leaders of MLJK-MA paid tribute to slain terrorist Irshad Ahmad Ganai of Padgampora, Pulwama who was killed on 12.09.2015 by Security Forces during an encounter at Kakapora. A delegation of MLJK-MA comprising Mohammad Rafiq Ganai (Spokesman) and Abdul Rashid Dar (District President) participated in his Nimaz-e-Jinaza. Such consistent pro-terrorist gestures were an attempt to fuel anger amongst masses against the Government and to create conducive atmosphere for the terror eco system including recruitment.
- d) The note further states that one Feroz Khan was tasked to get in touch with all ex-members/ workers of MLJK-MA who opined that they had to visit militants' funerals to remain relevant. He further directed all the members/ workers to be not active on Social Media / Print Media and to use it in a limited way as Indian Agencies were very vigilant these days.

- e) On 17.01.2021, MLJK-MA instructed its workers to visit families of the killed terrorists. In a way, MLJK-MA persisted with its activities to insinuate against Central Government resulting in suspicion in the minds of people.

Anti-national activities:-

9. The background note further mentions the anti-national activities being carried out by MLJK-MA, which have been taken into consideration for banning of the association.

10. On 29.03.2015, in a meeting of Majlis-e-Shoora at Srinagar, Masarat Alam Bhat was found reminding the participants of their so-called duties towards the secession struggle. He exhorted the participants that time had come when the secession struggle should be taken to its logical conclusion. His activities show the extent to which he attempted to create disaffection amongst the people of Jammu and Kashmir against the Central Government.

11. On 08.04.2015, Masarat Alam has extended his support in Srinagar, to the strike call given by Syed Shah Ali Geelani against establishing separate townships for migrant Pandits in Kashmir. He also appealed people to hold protest rallies after Friday prayers and stated that they would never ever allow it. He acted as a protagonist in such disruptive activities. Masarat Alam, with his extremist ideology has tried to create distrust and deep schism among the two religious' communities.

12. On various occasions, Pakistan-backed media houses and lobby groups produced news articles and conducted webinars spreading false narrative against the Indian Government for taking legal action against the separatist leaders including Masarat Alam. In these efforts, statements were also issued on behalf of Masarat Alam.

13. In September, 2010, Masarat Alam in an interview with wall street journal, warned to intensify the protest unless the central government offers major concession to appease protestors who wanted an Azad Kashmir. Besides, he claimed that people of Kashmir will do anything against India.

14. In March 2015, Masarat Alam was released from jail, who thereafter announced that Jammu and Kashmir was an 'occupied State'.

15. In March 2022, Muslim League held an emergency meeting of its core group in Muzaffarabad Pakistan, wherein it released a press note accusing Indian Security Forces of killing and mutilating 'secessionists', supporting the strike call of APHC. In another press release in October 2022, the accusations against security forces for violating human rights was spread through their propaganda. Similar press release was issued in Muzaffarabad Pakistan in September 2022 against the arrest of Jamat-e-Islami leaders and threatened to start a 'revolution' if arrests were not stopped.

16. The note further mentions that through various venomous posts on social media, MLJK-MA observed Indian Republic Day as 'black day' and glorified the protest procession in Pakistan on 26th January. On 05.02.2023, Muslim League expressed gratitude towards Pakistan Government for showing solidarity with the Kashmiris.

17. In March, 2023, MLJK-MA issued a statement wherein it accused security forces for silencing people of Kashmir by using rape as a weapon. In another social media post in same month, MLJK-MA termed Indian action in J&K as 'state terrorism' and claimed that the Indian action had failed to suppress the determination of Kashmiris for freedom for past seven decades. Similarly, on numerous occasions, MLJK-MA is stated to have vilified the Indian state by terming it 'fascist', calling Indian action as worst political, cultural and economic aggression. It spread the funeral procession video of slain militant Burhan Wani thereby glorifying terrorism. Muslim League consistently peddled the propaganda on above mentioned themes through its social media handles / profiles.

18. Some of the significant agitations, in which MLJK-MA under Masarat Alam played a pivotal role are as under:-

(i) In 2008, during the Amarnath Land Row agitation, various protest programs were undertaken by separatist leaders. On 11.08.2008, the separatists (including Masarat Alam) gave a call for 'Muzaffarabad Chalo'. During this land row, more than 400 incidents of stone-pelting were reported in which around 170 security forces personnel got injured. Around 500 civilians also got injured and 53 died in law & order incidents, when security forces had to disperse violent crowd. Pertinently, Masarat Alam was appointed by Hurriyat leaders as spokesman of 'Action Committee against Land Transfer' formed during this Amarnath Land Row agitation.

(ii) In 2009, Muslim League alleged that the death of two women in Shopian was a result of them being sexually assaulted by security forces. This false narrative was fanned by Muslim League. The same was also established during investigation by CBI. Multiple protest calls over this issue were given in Kashmir.

(iii) During the long summer protest in 2010, Masarat Alam rallied some likeminded APHC/G leaders for spreading anti-India and pro-Azadi movement in the pretext of protesting against alleged killing of innocent people by SFs. During these summer months, multiple protest calendars were issued by Masarat Alam calling for wide-scale observance of series of agitational activities. In July 2010, Masarat Alam held a Press

conference at Chinkaral Mohalla, Srinagar, in which the call for India to ‘Quit J&K’ was given. During these agitations, more than 2700 stone-pelting incidents were reported resulting in loss of lives of 112 civilians and injuries to more than 1000. The security forces were actively targeted during these protests and more than 5000 security forces personnel were injured and one even attained martyrdom.

(iv) In 2016, MLJK was at the forefront of protests in the aftermath of killing of Burhan Wani (a Hizb-ul-Mujahideen terrorist) in an encounter by the security forces. On instructions from Pakistan and ISI, MLJK and other secessionist parties exploited the situation and actively incited youth for indulging in violence and disrupting peace in J&K. As a result, the anti-India protests spread to many places in Kashmir. In various law & order incidents, 86 civilians died and nearly 9000 received injuries. The security forces were the prime target and more than 8000 security forces personnel were injured and 2 persons martyred in tackling the violence.

Activities indicating linkages with cross border agency/ establishment:-

19. Qasim Faktoo, Amir of MLJK-MA indulged in creating adverse and fake narrative against the Central Government by giving interviews and publishing rhetorical books, which were amplified by Pakistan-backed news services and publishers. In fact, the magnitude of his adverse activities was enhanced by top constitutional authorities of Pakistan including the President. For instance, Pakistani President released a book on Faktoo in January 2022. In July 2021, Masood Khan (President, POK) hailed Faktoo. Besides, social media posts ran galore wherein he was made a hero of separatist activities.

20. Similarly, Abdul Mateem who is the Secretary General of All Party Hurriyat Conference-PoK and a representative of Masarat Alam, has termed the actions of Indian Security Forces in J&K as ‘Israeli style genocide’ and called Kashmir as a ‘disputed territory illegally occupied by India’. These social media outbursts were planned as a part of spy-warfare by Pakistan establishment, wherein MLJK acted in total cahoots through its leaders and members.

21. In April, 2015, Masarat Alam was found involved in an act of raising Pakistani flag in Srinagar and chanting Pro-Pakistan slogans depicting Alam’s deep loyalty with Pakistan establishment.

22. In year 2016, Masarat Alam emerged as a poster boy of a campaign launched by Jamaat-ud-Dawah on social media that projected Kashmir as ‘jugular vein’ of Pakistan.

Foreign funding for secession activities:-

23. Muslim League is primarily funded by donations and grants from Pakistan, directly and indirectly. MLJK-MA leaders were in direct contact with Pakistani High Commission and Pakistan establishment to get large amounts of funding.

24. In June 2015, Abdul Ahad Parra (General Secretary) and Showkat Hakim (President, North Zone) met Sultan Naqvi (ISI official) at Pakistan High Commission, Delhi. The ISI official advised the leaders of MLJK-MA to set up a school in the Valley to indoctrinate children, which would be funded from across. He also advised the MLJK-MA leaders to construct a ‘Qaid-e-Azam’ House at Srinagar, which could serve as MLJK-MA headquarters.

25. MLJK-MA has continued to receive funds from antagonistic elements from across the borders, to sustain its adverse activities. To provide assistance to incarcerated Masarat Alam, Rs. 2 lakhs were sent by Pakistan establishment in September 2022. Further, Pakistan establishment provided (December 2, 2022) around Rs. 9 lakhs for MLJK-MA, which was collected by Farooq Tawheed (MLJK-MA leader) in absence of Abdul Ahad Parra (Acting Chairman, MLJK-MA). Farooq Tawheed distributed maximum of the amount among MLJK-MA cadres besides some money reserved for utilization in paying case fee of Masarat Alam.

26. On 06.07.2023, Abdul Ahad Parra and Bashir Ahmad Bhat @ Budgami received money from Sheikh Abdul Mateen (ML-Pakistan) on the occasion of Eid-ul-Zuha to carry out sacrifices in Handwara and Budgam respectively. Abdul Ahad Parra received amount in tune of Rs. 2 lakh under the garb of religious festivities, to carry out the sacrifices and expecting to receive quarterly payment of Muslim League from Pakistan. He had earlier received Rs. 9 lakh in March 2023.

27. This flow of funds over the years from across the borders, not only spells out the support of Pakistan rather it explicitly reveals the fountain head role of Pakistan, wherein organizations like Muslim League led by Masarat Alam act as an obedient conduit, with clear anti-national overtones.

Cases registered against MLJK-MA leaders/ members:-

28. Leaders of MLJK-MA have been involved in various serious cases, including, among others, unlawful activities, large-scale protests, criminal conspiracy and sedition. Members of the association have remained involved in supporting terrorist activities and have provided logistic support to terrorist in Jammu and Kashmir. Brief facts about the cases registered by the National Investigation Agency (NIA), the Directorate of Enforcement (ED) and the Jammu and Kashmir Police against MLJK-MA have been enclosed as Annexure-I to the Background Note.

Case being investigated by NIA, Delhi relating to MLJK-MA:-

29. Annexure-I to the background note mentions that a NIA case RC- 10/2017/NIA/DLI under sections 120B, 121 & 121A of IPC and sections 13, 16, 17, 18, 20, 38, 39 and 40 of the UAPA, 1967 was registered at NIA New Delhi, against Masarat Alam Bhat and others based on credible information that Masarat Alam Bhat was involved in the conspiracy of insurgency and funding for unrest in Jammu and Kashmir and also inciting people to hold protests, hartals and complete shutdowns. He started an initiative ‘Kashmir chod do Tehreek’, issued a calendar and publicized it on TV to instigate Kashmiris for secession. He was also involved in pro-Pakistan sloganeering, participated in protests which lead to killing of soldiers and civilians and destruction of public property etc. Masarat Alam Bhat was arrested on 04.06.2019 in the instant case and charges have been framed against him under section 120B, 121, 121A, 124A of IPC, section 13 of UAPA read with 120B of IPC, and Sections 17, 18, 20, 38 & 39 of UAPA.

Case being investigated by Enforcement Directorate (ED) relating to MLJK-MA:-

30. Annexure-I to the background note mentions that an Enforcement Directorate (ED) case bearing ECIR No. 03/DLZO-II/2017 dated 14.06.2017 was registered against Masarat Alam and others on the strength of NIA FIR No. RC-17. Enforcement Directorate has initiated PMLA investigation against the accused person/s which revealed that Masarat Alam received foreign funds to the tune of Rs.10,00,000/- through Hawala conduit Zahoor Ahmad Shah Watali. It is stated that Masarat Alam has been arraigned as an accused in the 1st supplementary charge sheet filed on 09.01.2023 and cognizance of the same was taken on 10.01.2023. Further supplementary Prosecution Complaint arraigning four more accused persons including Masarat Alam was also filed. As on date, the matter is at pre framing stage.

Cases being investigated by Jammu and Kashmir Police:-

31. Annexure-I to the background note mentions that in addition to the cases registered by NIA, Delhi Police and ED, the State Police of J&K have also registered many cases against the accused person/s i.e., Masarat Alam, Ashiq Hussain @ Mohd. Qasim Faktoo, Abul Ahad Parra, Farooq Ahmed Tawheed, Mustaq Ahmad Bhat, Pir Saifullah, Showkat Ahmad Hakeem, Mahraj-ud-din, Mohd. Younis Khanday, Manzoor Ahmad Paray, Abdul Rehman Lone, Mohd. Rafiq Ganie, and others, under various sections of UAPA, IPC, RPC Act 1932, TADA(P) Act, PRA Act, Arms Act, C.L.A Act in which they have been accused of perpetrating unlawful activities against the integrity and sovereignty of the country, raising anti national slogans, delivering hate speeches, propagating secessionism, disturbing communal harmony, provoking/inciting people to fight against security forces and to cause destruction of public property, forming conspiracies of insurgency and funding for causing unrest in the State, appreciating terrorist acts and promoting enmity between different groups on the grounds of separatism, which are prejudicial to the national integration and sovereignty of the Union of India.

32. Details of the cases registered by Jammu and Kashmir Police against the MLJK-MA members, as elucidated in Annexure-I to the background note, are as under:

Sl. No.	PS & District		BRIEF	Name(s) of the Accused	Present Status
1.	Shaheed Gunj, Srinagar	204/199, u/s302 RPC, 3(1) of TADA and 3/25 of IA Act.	On 05.12.1992, one Hriday Nath Wanchoo was assassinated by gunmen at Balgarden in Srinagar; renowned for documenting abuse of human rights. Ashiq Hussain along with 2 others were tried by Special Court, Jammu under TADA. TADA Court acquitted him in 2001. In 2003, sSC reversed the judgement and gave life imprisonment to all the three.	Ashiq Hussain @ Mohd. Qasim @Faktoo (ex-chief, ML)	Serving life imprisonment
2.	PS Handwara District Kupwara	140/1999 u/s 188 RPC, and sec. 13 of UAPA	On 08.09.1999 Syed Ali Shah Geelani and MasaratAlamalong with their associates provoked the general public to boycott elections etc.	Masarat Alam and others	Under investigation
3.	PS Sumbal District Bandipore	53/2015 u/s 13 of UAPA	On 28.03.2015, accused persons delivered anti-national speech against the integrity/sovereignty of the country and raised ‘Pakistan Zindabad’ slogans etc. at Markundal.	Masarat Alam and 6 other ML activists	Charge sheeted

4.	PS Handwara District Kupwara	141/2000 u/s 188 of RPC, and sec. 13 of UAPA	On 01.11.2000, Hurriyat leader Syed Ali Shah Geelani violated the curfew, provoked the general public called slogans and delivered speech against the sovereignty of the country.	Masarat Alam	Charge sheeted
5.	CIK Srinagar	10/2010 u/s 13, 17, 18 of UAPA, and sec. 120B, 121A of RPC.	Case pertains to raising funds and using the same for different unlawful secessionists/ individuals and others for anti-national activities.	Masarat Alam	Under investigation
6.	CIK Srinagar	10/2010 u/s 13, 17, 18 of UAPA, and 120B, 121A of RPC.	Case pertains to criminal conspiracy hatched by ISI with Masarat Alam Bhat for carrying out terrorist activities in the state.	Masarat Alam	Under investigation
7.	PS Kralgund District Kupwara	30/2015 u/s 13 of UAPA, and 147, 124-A of RPC.	On 08.04.2015, Masarat Alam Bhat proceeded at village Lalbugh and Ganapora along with his associates and called of meeting of public, after that came to national highway Ganapora and raised anti national slogans etc.	Masarat Alam and others	Charge sheeted
8.	PS Anantnag District Anantnag	256/10 u/s, 147, 148, 336, 353 of RPC, and 13(2) of UAPA.	On 26.06.2010, local police station received a docket from SHO PS Anantnag camp office K.P Road near G.B.S Anantnag to the effect that SHO along with escort, PP Sheerbagh, GBS nafri on patrolling reached near K.P Road where unknown anti national elements have pasted posters against integrity of India.		
9.	PS Harwan District Baramulla	59/2010 u/s 13, 18 of UAPA.	Case pertains to the criminal activities of Masarat Alam Bhat to provoke the general masses for agitation/separation from India etc.	Masarat Alam	Charge sheeted
10.	PS Kothibagh District Srinagar	52/2010 u/s 124, 506 of RPC, and sec. 13 of UAPA.	On 27.07.2010, the instant case was registered on a complaint lodged by D.M. through SSP Srinagar that Masarat Alam Bhat of Tehreek Hurriyat has circulated a video CD in which he is not only trying to Spread dissatisfaction among the security forces working in J&K State and S/F Personnel to quit J&K state etc.	Masarat Alam	Charge sheeted
11.	PS Kralkhud District Kupwara	12/2006 u/s 148, 188, 307, 332, 353, 427 of RPC	Case registered in PS Kralkhud as some Hurriyat leaders headed by Masarat Alam in shape of mob along with people took to road and raised slogans against country during hartal call given by Hurriyat leader. The unruly mob invades the Police when the police asked them to disperse etc.	Masarat Alam	Charge sheeted
12.	Maisuma, District Srinagar	07/2010, u/s 121A, 13 of UAPA	On 22.01.2010, SI Mohd Asadullah 7036/NGO SO CIK Sector Kothibagh lodged a written	Masarat Alam	Charge sheeted

			report in the police station to the effect that on 20.01.2010 he was on usual duty in the premises of Saddar Court Srinagar along with other CIK official when some Hurriyat (G) including Masarat Alam Bhat was produced by the SHO P/S Nageen before the Hon'ble Court of law for acquiring remand and was released in open court while coming out from the court he threatened the SHO P/S Nageen of dire consequence and also used provocative language against the sovereignty of the state as well as Union of India etc.		
13.	PS Nigeen District Srinagar	34/2006 u/s 10 of CLA Act, and 13 of UAPA.	On 06.05.2006, leaders of Hurriyat Conference entered in the premises of KU raised Anti-National Slogans and addressed the students of KU motivating them to stand against the integrity and sovereignty of India and in favour of Pakistan. They also asked students to hold protest rallies.	Masarat Alam	Challaned
14.	PS Nigeen, District Srinagar	60/2010 u/s 148, 336, 436, 183, 153A, 332, 353, 427 of RPC, sec. 13 of UAPA, and sec. 3 of PDPP Act	On 11.09.2010, PS Nigeen received an information from sources to the effect that an unruly mob headed by Masarat Alam Bhat, Mehrajud-Din Kalwal, Suhail Poison, Sagib Banday etc. are protesting within the premises of Shrine Hazratbal against sovereignty/integrity of India and affiliation with J&K State. They are raising anti national slogans like "Hum Kya Chahtay", Go India Go back and also attacked the armed police personnel posted for the protection of shrine, pelted stones upon them, ransacked the Guard hut/wireless centre and set ablaze the uniform, bedding, clothing and weapons allotted to them. The unruly mob also broke down the Dhobi Gate, Banday Gate and VIP gate of the Shrine. They also set ablaze a police vehicle.		Charge sheeted
15.	PS Shaheed Gunj, District Srinagar	74/10u/s 10 of CLA, 13 of UAPA, and 153B of RPC.	On 27.06.2010, posters were observed pasted on the walls, electric poles containing 'Go India Go Back' at Zaindear Mohalla in the vicinity of Masarat Alam.	Masarat Alam	Charge sheeted
16.	PS Karan Nagar, District Srinagar	02/2001 u/s 10 of CL Act, sec. 13 of UAPA, and sec. 121, 122 of RPC.	Mohammad Muzaffar Mirza s/o Gh. Mohammad r/o Zainakadal and others of banned organization Jamiat-ul-Mujahideen under the close supervision of Gh. Rasool Shah @ General Abdullah (Commander) S/O Ab. Khaligq R/O Harnag Kupwara are active in	Masarat Alam & Others	Charge sheeted

			J&K particularly in valley. The motive of this banned organization is to separate J&K from the India and instigating the youths of valley to indulge in militancy by taking illegal weapon etc. they are hatching conspiracy to separate J&K from the union of India.		
17.	PS Nowhatta District Srinagar	50/2010 u/s 307, 120B, 48, 149, 336, 332 of RPC	On the eve of Shab-i-qadir PS Nowhatta received a reliable information to the effect that a mob of approximately 1000 people came from Tujgari Mohalla headed by Masarat Alam Bhat S/o Abdul Majeed Bhat R/O Zaindar Mohalla Habbahadal Srinagar started pelting stones upon P/S building and SDPO Office Khanyar Srinagar with criminal intention and also lobed some Petrol Bombs etc.	Masarat Alam	Charge sheeted
18.	PS Safakadal, District Srinagar	70/2007 u/s 13, 18 of UAPA.	On 22.04.2007, PS Safakadal received a written docket from IC PP Noorbagh stating therein that during patrolling at Eidgah along with other constabulary it was found that member of Hurriyat (G) addressed a gathering at Eidgah which was headed by Syed Ali Shah Geelani, Gh Nabi Sumji, Mohammad Ashraf Khan and during their address they said that accession of State with India is temporary and by these addressee anti Govt. sentiments got provoked and in the rally Masrat Alam, Firdous Ahmad Shah, Mustaq Ahmad Sofi and other invited people there to raise slogans against India. Further praised the terrorists' organizations and also raised slogans in favour of Pakistan, thus by these acts on part of accused persons there is threat to the integrity and security of State and Country.	Masarat Alam	Under investigation
19.	PS Budgam, District Budgam	92/2015 u/s 147, 341, 336, 427, 120, 121, 124A of RPC and 13 of UAPA	On 15.4.2015, PP Humhama received an information through reliable sources that on return Syed Ali Shah Geelani from Delhi and other Hurriyat activists gathered at Hyderpora and raised slogans against India.	Masarat Alam and others	Under investigation
20.	PS Kathua, District Kathua	83/2013 u/s 13 of UAPA	Pertains to provoking people who were visiting district jail Kathua to meet Hurriyat activists there, who instigated them against the government regarding decision of the court related to Afzal Guru.	Masarat Alam	Under investigation
21.	PS Baramulla, District Baramulla	137/2013 u/s 13 of UAPA and	The case pertains to some anti national publication by way of posters by some anti national	Masarat Alam	Under investigation

		sec. 506, 120 of RPC	elements (Masarat Alam), which is threat to integrity and sovereignty of India and had appealed people to join the path of violence.		
22.	PS Uri, District Baramulla	69/1999 u/s 13 of UAPA and sec.188 of RPC	The case stands registered against Masarat Alam and other activists of Hurriyat for delivering anti national speech at Bus stand Uri.	Masarat Alam & Others	Charge sheeted
23.	PS Pattan, District Baramulla	215/2010 u/s 148, 149, 188, 307, 427 of RPC	On 17.09.2010, PS Pattan received a written docket from IC PP Mirgund that during Palhalan Chalo call given by separatists, an unruly mob at NHW Singhpora pelted stones upon deployed nafri and security forces.	Masarat Alam & Others	Charge sheeted
24.	PS Baramulla, District Baramulla	258/2016 u/s 13 of UAPA	The case pertains to instigating of terrorists for carrying out different kinds of terrorist activities in town Baramulla by Masarat Alam while detained in jail and also instigating people for antinational activities through different people who come to meet him in jail.	Masarat Alam	Under investigation
25.	PS Utterso District Anantnag	31/2018 u/s 120B of RPC and sec.13 of UAPA	Pertains to spreading terrorism by APHC activists by instigating youth through provocative speeches during the funeral of a terrorist.	Masarat Alam and others	Charge sheeted
26.	PS Baramulla District Baramulla	52/2017 u/s 120B of RPC and section 13 of UAPA	Pertains to unlawful activities carried out by some anti-national elements by way of mobile phones in sub-jail which they have illegally obtained.	Masarat Alam and others	Under Investigation
27.	PS Pulwama, District Pulwama	124/2016 u/s 13 of UAPA	Pertains to provocative speeches given by people who are associated with Hurriyat Conference wherein they provoke people against government and country. They also raised slogans for azadi for India.	Abul Ahad Parra s/o Mohd. Sultan Parra r/o Deedarpura, Budran, Kupwara	Under Trial
28.	PS Sopore District Baramulla	69/2020 u/s 13 of UAPA	Pertains to stone pelting upon the security forces by a mob at Saidpora Sopore and instigating youth in the area by some Hurriyat activists including Farooq Ahmed Tawheed to pelt stones on security forces and Police.	Farooq Ahmed Tawheed s/o Habibullah Hajam r/o Tawheed Bagh Sopore	Charge sheeted
29.	PS Shergarhi, District Srinagar	35/2022 u/s 124A, 506 IPC and section 13 of UAPA.	On 17.03.2022, PS Sherghari received an information through reliable sources to the effect that one individual namely Masarat Alam through his associates is indulging in the activities that are prejudicial to the security and sovereignty of India, etc.	Farooq Ahmed Tawheed and others	Under investigation
30.	PS Pulwama, District Pulwama	362/2010 u/s 148, 188, 307, 336, 332 of RPC and sec 13 of UAPA.	Pertains to L&O and defying the durfew orders of the concerned magistrate, a large number of people tried to reach Kakpora. They pelted stones upon police and Security Forces. They also raised anti-national and provocative slogans.	Farooq Ahmed Tawheed and others	Charge sheeted

31.	PS Pulwama, District Pulwama	46/2016 u/s 307, 148, 149, 226 of RPC and sec. 7/27 of Arms Act.	Pertains to cordon and search pertain by 50 RR and SOG at Ahangar Mohalla Kakpora wherein youth pelted stones upon Security Forces in order to help terrorists to flee.	Farooq Ahmed Tawheed	Charge sheeted
32.	PS Hajin, District Bandipore	17/2014 u/s 132 of PRA Act and sec. 13 of UAPA	On 07.03.2014, a reliable information was received that the accused person along with others had gathered the general public at Main Chowk Hajin and where provoking the general public to boycott the elections and where also chanting anti-India Slogans thus causing threat to the sovereignty and integrity of India. The Accused persons were also chanting pro-Pakistan slogans. During the course of investigation, the accused persons were arrested and the chargesheet of the said chase was produced before the Hon'ble Court on 17.02.2022.	Mushtaq Ahmad Bhat	Charge sheeted
33.	PS Hajin, District Bandipore	26/2014 u/s 13 of UAPA and section 132 of PRA Act.	On 19.03.2014, a reliable information was received that the accused person along with others had gathered the general public at Paray Mohallah Hajin and were provoking the general public to boycott the elections and were also chanting anti-India slogans thus causing threat to the sovereignty and integrity of India. The accused persons were also chanting pro-Pakistan slogans. During the course of investigation, the accused persons were arrested and the chargesheet of the said case was produced before the Hon'ble Court on 14.12.2021.	Mushtaq Ahmad Bhat	Charge sheeted
34.	PS Khanyar District Srinagar	84/2009 u/s 13 of UAPA, and sec. 188 of RPC	On 11.12.2009, a procession headed by Hurriyat separatists i.e., Syed Ali Shah Geelani Chairman Hurriyat (G), Peer Saifullah of Muslim League and others were defying the orders were raising antinational slogans and were making speeches against the Union of India and provoked youth to raise slogans against security forces.	Pir Saifullah	Charge sheeted
35.	PS Aragam, District Bandipore	23/2015 u/s 302, 149, 427, 307, 34, 120B of IPC and section 16, 18 of UAPA.	Pertains to killing of a Police Sub Inspector Altaf Dar on October 7, 2015. Altaf Dar of SOG and other police officers were fired upon while they were chasing terrorists Altaf Dar succumbed to fire-arm injuries.	Showkat Ahmad Hakeem, Mahraj- ud-Din, Mohd. Younis Khanday, Manzoor Ahmad Paray.	Under Trial
36.	PS Chadoora, District Baudgam	80/2010 u/s 13 of UAPA	On 21.5.2010, Masarat Alam Bhat accompanied by other Hurriyat activists delivered an anti-national	Masarat Alam Bhat	Under trial

			speech at main Bazar Chadoora and raised slogans in favor of Pakistan and against India.		
37.	PS Kralgund, District Handwara	52/2010 u/s 148, 336, 332 of RPC	Abdul Ahad Parra and other activists played vital role during unrest 2010 in disrupting the peace in the area by way of instigating/provoking the youth of the area.	Abudl Parra Ahad	Under trial
38.	PS Sadder, District Srinagar	238/1995 u/s 147, 341, 153A RPC	On 28.06.1995, Jail authorities of Rangreth had fixed meeting prisoners with their parents nafris from PCR Srinagar had not reported duties on time parents cannot meet with their prisoners they have to wait on general road later on prisoners called their parents to raise loudly antinational slogans also they broke the main gate of the sub-jail and entered inside the premises also prisoners including Masarat Alam Bhat fired blankets which were issued to them and also broke the windows and doors and came out to the yards.	Masarat Alam Bhat	Under Trial
39.	PS Sadder, District Srinagar	160/1996 148, 336 of RPC	Brief facts of the case are that on 31.03.1996, Masarat Alam and other jail associates started slogans in the jail for shifting of their lodgment. They raised anti-national slogans etc.	Masarat Alam Bhat	Under trial
40.	PS Kothibagh, Srinagar	80/2006 u/s 147, 188, 341 of RPC	On 31.07.2006, a group of Hurriyat activists assembled at Abi Guzar Headed by Masarat Alam Bhat and Sit Down in the main road due to which General traffic was disrupted etc. They also raised anti-national slogans.	Masarat Alam Bhat	Under trial
41.	PS Kothibagh, Srinagar	86/2006 u/s 147, 341 of RPC	On 10.08.2006, a group of Hurriyat activists assembled at Regal Chowk headed by Masarat Alam Bhat and sit down in the main road due to which General Traffic was disrupted etc.	Masarat Alam Bhat	Under trial
42.	PS Rainawari, District Srinagar	42/2006 u/s 148, 149, 336, 427, 447 of RPC	On 25.06.2008, an unruly mob of nearly 500 persons armed with iron rods and stones led by Masarat Alam Bhat were advancing towards Kathi Darwaza from Badamwari Park set a hut of Badamwari Park on fire and also caused damage to other property of the park etc.	Masarat Alam Bhat	Under trial
43.	PS CIK, District Srinagar	15/2010, u/s 13 of UAPA and section 120, 121, 153A, 153B of RPC	Case pertains to press conference by Masarat Alam Bhat where he appealed the public to take part in the ongoing freedom struggle and suggested people to write on houses, walls, bridges and roads the slogans of "Go India Go Back". He also provoked the people against the establishment by hate speech against India and the	Masarat Alam Bhat	Under trial

			establishment and appealed the masses to come out on roads against the government to disrupt the peace. He blamed forces personnel for killings/ damage of properties etc. After his press conference youth from every nook and corner of the valley took to streets and started pelting stones on Security Forces/ Police Personnels endangering their life and Government Property.		
44.	PS Kupwara, District Kupwara	174/2009 u/s 13 of UAPA and 120, 153A of RPC	On 13.11.2009, after conclusion of Friday prayers a mob came out from Jamia Masjid Kupwara headed by Hurriyat activist Peer Saifullah and Abdul Rehman Lone of Muslim League were raising antinational slogans, etc. During their speech they were provoking people to wage war against India and ceding Jammu and Kashmir from the Union of India.	Peer Saifullah and Abdul Rehman Lone	Under Investigation
45.	PS Pulwama, District Pulwama	43/2010 u/s 148, 336, 427, 153A of RPC	Mohd Rafiq Ganie of Muslim League entered Jamia Masjid Pulwama and gave a provocative against Security Forces and also provoked people for stone pelting and attacking Security Forces. Deliberating upon the recent happenings in Shopian and Qalampora, he provoked the people against the country and led a procession after Nimaz towards Rajpora Chowk while chanting slogans in favour of Azadi and pelted stones on Security Forces and Police besides damaging some vehicles.	Mohd Rafiq Ganie	Under investigation
46.	PS Sopore, District Sopore	68/2015 u/s 153A, 504 of RPC	On 13.05.2015, Masarat Alam Bhat delivered anti-National speech/slogans at the residence of Mohammad Ramzan Shalla at Arampora, Sopore. He also provoked the people of Arampora Sopore to instigate the masses of the area to act against the establishment and the Government of India. He also tried to create wedge between different communities and disrupt peace and tranquility in the area.	Masarat AlamBhat	Under Trial
47.	PS Sadder, District Srinagar	284/1999 u/s 147, 341, 153A of RPC	On 15.09.1999, Mohammad Ashraf Sherai along with Masarat Alam Bhat tried to proceed towards Srinagar city from Rambagh in shape of a procession and raised anti-national slogans due to which traffic movement was blocked. They also harassed the general public.	Masarat Alam Bhat	Under investigation

48.	PS Sadder, District Srinagar	128/2010 u/s 121A, 124A, 505, 506 of RPC	<p>On 27.06.2010, PS learnt a reliable information that some persons affiliated with Hurriyat conference namely Masarat Alam, Bashir Ahmed @ Peer Saifullah have pasted some posters on the walls (Go India Go Back) and burnt National/ State Flags at Parayora. They have hatched a criminal conspiracy for separating Kashmir from Union of India etc. by way of issuing threat posters to threaten the common people.</p>	Masarat Alam Bhat	Under investigation
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III. REPLY ON BEHALF OF THE ASSOCIATION

33. MLJK-MA has filed a reply to the background note filed by the UOI. The allegations made in the Background Note are denied by the association.

The political identity of MLJK-MA

34. It is stated that MLJK-MA is a derivative entity of the All Parties Hurriyat Conference (“APHC”), a longstanding political consortium established in the State of Jammu and Kashmir in 1993, advocating for the right to self determination of the Kashmiri people. The Government of India in the past has consistently engaged in dialogues with the APHC, aiming to devise a comprehensive framework addressing the governance and statehood complexities inherent in Kashmir’s intricate historical and political landscape.

35. It is stated that from its inception in 2008 to the present day, MLJK-MA has maintained its status as a purely political entity, and has never indulged in or propagated violent or militant means of resistance. Its core mission has consistently revolved around implementing the resolution passed on 05.01.1949 by the United Nations Commission for India and Pakistan, which advocated for a plebiscite to determine the accession of the J&K to either India or Pakistan. As such, all of the association’s endeavours have been dedicated to advancing this cause within J&K. Further, MLJK-MA and its vast majority of supporters have been very vehement in raising their voices against the severe human rights violations in J&K by the security forces against the civilian Kashmiri population, including enforced disappearances, custodial torture, fake encounters, and sexual violence.

36. Para 5 and 6 of the reply is reproduced hereunder:-

“5. That MLJK-MA is a derivative entity of the All Parties Hurriyat Conference (“APHC”), a longstanding political consortium established in the State of Jammu and Kashmir (“J&K”) in 1993, advocating for the right to self- determination of the Kashmiri people. The Government of India in the past has consistently engaged in dialogues with the APHC, aiming to devise a comprehensive framework addressing the governance and statehood complexities inherent in Kashmir’s intricate historical and political landscape.

6. That from its inception in 2008 to the present day, MLJK-MA has maintained its status as a purely political entity, and has never indulged in or propagated violent or militant means of resistance. Its core mission has consistently revolved around implementing the resolution passed on 05.01.1949 by the United Nations Commission for India and Pakistan (“UNCIP”), which advocated for a plebiscite to determine the accession of the J&K to either India or Pakistan. As such, all of the Organization’sendeavors have been dedicated to advancing this cause within J&K. Further, MLJK-MA and its vast majority of supporters have been very vehement in raising their voices against the severe human rights violations in J&K by the security forces against the civilian Kashmiri population, including enforced disappearances, custodial torture, fake encounters, and sexual violence.”

37. The association has its headquarters in Rajbagh, Srinagar, and has cadres present across every district in Kashmir. Its activities primarily entail facilitating public dialogues, organizing peaceful rallies, and conducting seminars on using judicial means of accountability for human rights violations in the valley.

MLJK-MA has not supported any terrorist activities

38. In the context of the allegation in the background note that in the guise of supporting terrorist activities, there has been en masse attendance in funerals by the members of MLJK-MA, all claims concerning the attendance of funerals by MLJK-MA members are denied by the association, and the same are stated to be false and baseless. It is stated that even if such funerals were attended, the Background Note fails to grasp the cultural and societal norms of Kashmir, where funeral gatherings draw masses to offer condolences, considering a loss as a communal one affecting the wider society.

39. The assertion in the Background Note that Masarat Alam has association with figures like Hafiz Sayeed, Ikhtiar Hyder Rana, and Syed Salahuddin, is denied. It is stated that Masarat Alam has had no connection whatsoever with these individuals, and such claims are made solely to cast a shadow on the excesses committed by the security forces in the valley. Further, it is stated that Masarat Alam has been in near-continuous incarceration since 1990 up to the present day, making it highly improbable for him to have developed such cross-border networks.

40. Regarding the arrest of certain members of MLJK-MA, (Showkat Hakeem and Mehrajuddin Nanda), in relation to the killing of J&K policeman (Altaf Ahmed Dar), it is stated that the said case is currently under trial. Until a conclusion is reached, any comments regarding the matter would be premature and inappropriate. It further stated that individual criminal actions by members, unrelated to the association's objectives, should not be the grounds for proscribing the association's members in legal proceedings.

MLJK-MA activities are not anti-national in nature

41. It is stated that the association has always asserted its secular ethos and at no point demanded separate enclaves for migrant Pandits within the Kashmir valley. Therefore, aligning itself with the stance of the APHC, the MLJK-MA has consistently advocated for the peaceful return of Kashmiri Pandits to the valley, fostering a vision of harmonious cohabitation among diverse religious communities.

42. It is stated that the protests, of September 2010 and March 29, 2015, have been inaccurately sensationalized in the Background Note. The Background Note distorts the tone, tenor, and content of speeches to align with the Union's false narrative, obscuring its mishandling of the political situation in the valley and the excessive use of force by security forces against civilians for over three decades. MLJK-MA aimed at peaceful rallies advancing the association's objectives, fully protected under the right to free speech and expression. Specifically, the association underscores its passive involvement in the 2010 protests, where it was merely one among numerous participating entities. The attribution of stone-pelting incidents to the association is refuted, as it has steadfastly maintained a commitment to non-violent political activism. It is stated that the civilian casualties cited were not instigated by the MLJK-MA, but tragically occurred at the hands of security forces.

43. That assertion of association's involvement in other protests (Amarnath Land Row Agitation, 2008 and aftermath of killing of Burhan Wani, 2016), are denied as wholly baseless and it is stated that the association has had no involvement whatsoever in the said protests.

44. It is stated that the association has openly criticized human rights violations, including extrajudicial killings and sexual assault, perpetrated by security forces in J&K. It is stated that these condemnations mirror widespread sentiments within the state and echo concerns raised by international bodies such as the United Nations, Amnesty International, and Human Rights Watch. It is stated that by vocalizing opposition to such abuses, the association exercises its fundamental right to denounce injustice.

45. In the context of the Background Note alleging dissemination of anti-national content through social media platforms, such as designating Republic Day as a ‘Black Day’ and propagating funeral processions of figures like Burhan Wani, the same are denied and the association asserts its complete absence from social media platforms, disavowing any association with the alleged activities.

MLJK-MA activities do not indicate linkages with cross-border agencies

46. In response to the Background Note making reference to purported activities (involving Qasim Faktoo and Abdul Mateem) in collaboration with Pakistani entities and agencies, it is submitted that neither of these individuals has ever had any association with the association, therefore, the alleged activities cannot be ascribed to the association. Further, it is stated that during the alleged incident in April 2015, Masarat Alam was incarcerated and thus could not have raised a Pakistani flag. Furthermore, it is stated that Masarat Alam has never engaged in any form of social media activity, rendering baseless any claims of him being portrayed as a ‘posterboy’ in a campaign orchestrated by Jamaat-ud-Dawah.-ud-Dawah.

MLJK-MA has not accepted any foreign funding for its activities

47. It is stated that MLJK-MA staunchly upholds its autonomy from any transnational entities, maintaining its financial integrity through exclusive reliance on local funding sources. It is stated that the Background Note inaccurately asserts the receipt of funds from Pakistani entities, citing purported instances in June 2015, September 2022, and July 2023. It is stated that these allegations lack substantiation, failing to elucidate any concrete money trail or connection regarding fund transfers. Moreover, they depict the sporadic nature of these alleged transactions, devoid of any evidence indicating sustained financial support.

IV. STATUTORY PROVISIONS

48. Section 2 (o) and (p) of the UAPA, read as follows:-

“2. Definitions. – (1) In this Act, unless the context otherwise requires,-

(o) “unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise), -

- (i) Which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or, the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or*
- (ii) Which disclaims, questions, disrupts, or is intended to disrupt the sovereignty and territorial integrity of India; or*
- (iii) Which causes or is intended to cause disaffection against India;*

(p) “unlawful association” means any association,-

- (i) which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity; or*
- (ii) which has for its object any activity which is punishable under Section 153-A or Section 153-B of the Indian Penal Code (45 of 1860), or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:*

Provided that nothing contained in sub-clause (ii), shall apply to the State of Jammu and Kashmir”.

49. Section 2(o) of the Act defines ‘unlawful activity’. It means “any action taken” by an association or an individual of the kind mentioned in clauses (i), (ii) and (iii) of the said sub-section. Any action taken has reference to and must be of the kind stipulated in and covered by clauses (i), (ii) or (iii) of Section 2(o). Action can be either written or spoken, by sign or by visible representation or even otherwise. Clause (i) refers to “action taken” (including

by way of spoken or written words or by visible representation) with the intent or which supports any claim for secession or cession of any part of India or incites any individual or group of individuals to bring about secession or cession. Clause (ii) refers to “action taken” (including by way of spoken or written words or by visible representation) which has the effect of disclaiming, questioning, disrupting or intending to disrupt the sovereignty and territorial integrity of India. Clause (iii) refers to “action taken” (including by way of spoken or written words or by visible representation) which causes or is intended to cause disaffection against India.

50. Unlawful association has been defined in Section 2(p) of the Act and consists of two parts; (i) and (ii). Part (i) refers to unlawful activity defined in Section 2(o) and encompasses associations which have the object that encourage or even aid persons to undertake the said activity. The last part of Part (i) widens the definition of the term “unlawful association” to include an association of which members undertake unlawful activity. In a way, therefore, the association is liable to be regarded as an unlawful association if its members undertake unlawful activity.

V. NATURE AND SCOPE OF PROCEEDINGS BEFORE THE PRESENT TRIBUNAL

51. The nature of the proceedings before this Tribunal and the scope of inquiry in the present proceedings have been laid down by the Supreme Court in *Jamaat-e-Islami Hind vs. Union of India* (1995) 1 SCC 428 in the specific context of the provisions of the UAPA, 1967. The proceedings before this Tribunal are governed by the procedure laid down in the Code of Civil Procedure, 1908, as set out in Section 9 r/w Section 5 of the UAPA, 1967. The standard of proof is the standard prescribed by the Supreme Court in *Jamaat-e-Islami Hind* (supra). This *lis* has to be decided by objectively examining which version is more acceptable and credible. In this regard, reference may be made to following observations in *Jamaat-e-Islami Hind* (supra):-

“30. The allegations made by the Central Government against the Association - Jamaat-E-Islami Hind - were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the Association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute "unlawful activity" within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross-examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the Association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained.”

52. The present Tribunal, constituted under the UAPA, has been vested with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act, which are reproduced as under:-

“5. Tribunal. (1) *The Central Government may, by notification in the Official Gazette, constitute, as and when necessary, a tribunal to be known as the "Unlawful Activities (Prevention) Tribunal" consisting of one person, to be appointed by the Central Government: Provided that no person shall be so appointed unless he is a Judge of a High Court.*

(2) *If, for any reason, a vacancy (other than a temporary absence) occurs in the office of the presiding officer of the Tribunal, then, the Central Government shall appoint another person in accordance with the provisions of this section to fill the vacancy and the proceedings may be continued before the Tribunal from the stage at which the vacancy is filled.*

(3) *The Central Government shall make available to the Tribunal such staff as may be necessary for the discharge of its functions under this Act.*

(4) *All expenses incurred in connection with the Tribunal shall be defrayed out of the Consolidated Fund of India.*

(5) *Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.*

(6) *The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:-*

- (a) *the summoning and enforcing the attendance of any witness and examining him on oath;*
- (b) *the discovery and production of any document or other material object producible as evidence;*
- (c) *the reception of evidence on affidavits;*
- (d) *the requisitioning of any public record from any court or office;*
- (e) *the issuing of any commission for the examination of witnesses.*

(7) *Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1898 (5 of 1898)."*

“9. Procedure to be followed in the disposal of applications under this Act.—Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code of Civil Procedure, 1908 (5 of 1908), for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.”

53. Further, under Section 4(1) of Act, the Central Government refers the notification (issued under Section 3(1) of the Act) to the Tribunal for “adjudicating” whether or not there is “sufficient cause” for declaring the association unlawful. Section 4(2) requires issuance of notice on the association affected to show cause as to why the association should not be declared as unlawful. Section 4(3) mandates an inquiry in the manner specified in Section 9 after calling for such information as may be necessary from the Central Government or from the office bearers or members of the association. The Tribunal under Section 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the UAPA in **Jamaat-e-Islami Hind** (supra), it was held by the Supreme Court as under:-

“11.... The entire procedure contemplates an objective determination made on the basis of material placed before the Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis

between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Tribunal is “whether or not there is sufficient cause for declaring the Association unlawful”. Such a determination requires the Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test applicable in the context.”

54. On the question of confidential information that is sought to be withheld, the Supreme Court emphasized that the Tribunal can look into the same for the purpose of assessing credibility of the information and the Tribunal should satisfy itself whether it can safely rely upon it. This was necessary as, in certain situations, source of information or disclosure of full particulars may be against public interest. Such a modified procedure while ensuring confidentiality of information and its source in public interest, enables the Tribunal to test the credibility of confidential information for objectively deciding the reference. It was emphasized that the unlawful activities of an association may quite often be clandestine in nature and, therefore, material or information for various reasons may require confidentiality. Disclosure, it was held, can jeopardize criminal cases pending investigation and trial.

55. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3 of UAP Rules, 1968. Rule 3(1) stipulates that the Tribunal subject to sub-rule (2) shall follow, “as far as practicable”, the rules of evidence laid down in Indian Evidence Act. In this regard, reference can be made to the following observations in **Jamaat-e-Islami Hind** (supra):-

*“22. ...The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the *ipse dixit* of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.*

23. In John J. Morrissey and G. Donald Booher vs. Lou B. Brewer [408 US 471: 33 L Ed 2d 484 (1972)] the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

“Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a ‘neutral and detached’ hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial.”

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26.The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure, in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the

Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.”

56. The legislative intent in making the provisions of the Evidence Act applicable only “*as far as practicable*” is evident from the nature of these proceedings. The proceedings before this Tribunal do not contemplate a full-fledged trial; rather the proceedings are in the nature of an “inquiry” as referred to in Section 4(3). Within the wide range of probabilities, the standard of proof is the “*test of greater probability*”. The scrutiny is not akin to a criminal trial. Objective determination requires the Tribunal to reach the conclusion whether the material to support the declaration outweighs the material against it. Further, the materials in such matters are not confined to legal evidence in the strict sense.

57. Before assessing the credibility of material and analyzing evidence adduced, it is apposite to take note of Sections 25, 26 and 27 of the Indian Evidence Act, as well as Sections 161 and 162 of the Code of Criminal Procedure, 1973. The same are reproduced hereunder:

“Indian Evidence Act, 1872

25. ***Confession to police-officer not to be proved.***—No confession made to a police-officer, shall be proved as against a person accused of any offence.

26. ***Confession by accused while in custody of police not to be proved against him.***—No confession made by any person whilst he is in the custody of a police-officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such person.

*Explanation.—In this section “Magistrate” does not include the head of a village discharging magisterial functions in the Presidency of Fort St. George 6 *** or elsewhere, unless such headman is a Magistrate exercising the powers of a Magistrate under the Code of Criminal Procedure, 1882 (10 of 1882).*

27. ***How much of information received from accused may be proved.***—Provided that, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police-officer, so much of such information, whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved.

Code of Criminal Procedure, 1973

“161. ***Examination of witnesses by police.***—(1) Any police officer making an investigation under this Chapter, or any police officer not below such rank as the State Government may, by general or special order, prescribe in this behalf, acting on the requisition of such officer, may examine orally any person supposed to be acquainted with the facts and circumstances of the case.

(2) Such person shall be bound to answer truly all questions relating to such case put to him by such officer, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.

(3) The police officer may reduce into writing any statement made to him in the course of an examination under this section; and if he does so, he shall make a separate and true record of the statement of each such person whose statement he records.

Provided that statement made under this sub-section may also be recorded by audio-video electronic means:

Provided further that the statement of a woman against whom an offence under section 354, section 354A, section 354B, section 354C, section 354D, section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB], section 376E or section

509 of the Indian Penal Code (45 of 1860) is alleged to have been committed or attempted shall be recorded, by a woman police officer or any woman officer.

162. Statements to police not to be signed: Use of statements in evidence.—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

58. As per Sections 25 and 26 of the Evidence Act, confessions made to a police officer or while in custody shall not be proved against a person accused of any offense during the trial of that offense. As per Section 162 of the Cr.P.C., no statement made by any person to a police officer in the course of an investigation under Chapter XII (which includes Section 161 Cr.P.C.) can be used, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. However, these sections do not prohibit the use of such statements in proceedings where the accused is not being tried for the specific offense in question, or in civil proceedings or ancillary proceedings.

59. The Supreme Court in *Mahesh Kumar vs. State of Rajasthan*, 1990 Supp SCC 541 (2), noted the possible use of statement made to the police by the accused persons for being used as evidence against the accused in an “enquiry” although inadmissible as evidence against them at the trial for the offence with which they were charged. Relevant extract of the said judgment is as under:

“3. In *Queen Empress v. Tribhovan Manekchand* a Division Bench of the Bombay High Court laid down that the statement made to the police by the accused persons as to the ownership of property which was the subject matter of the proceedings against them although inadmissible as evidence against them at the trial for the offence with which they were charged, were admissible as evidence with regard to the ownership of the property in an enquiry held by the Criminal Procedure Code. The same view was reiterated in *Pohlu v. Emperor* where it was pointed out that though there is a bar in Section 25 of the Evidence Act, or in Section 162 CrPC for being made use of as evidence against the accused, this statement could be made use of in an enquiry under Section 517 CrPC when determining the question of return of property. These two decisions have been followed by the Rajasthan High Court in *Dhanraj Baldeokishan v. State* and the Mysore High Court in *Veerabhadrapappa v. Govinda*. In the present case, the amount in question was seized from the accused in pursuance of statements made by them under Section 27 of the Evidence Act. The High Court as well as the courts below have found the property to be the subject of theft and the acquittal of the accused is upon benefit.”

60. The Supreme Court in *Khatri (IV) vs. State of Bihar*, (1981) 2 SCC 493 with reference to the bar under Section 162 of the Cr.P.C viz. against use in evidence of statement made before a police officer in the course of investigation, held, the same would not apply where court calls for such statement in a civil proceeding provided the statement is otherwise relevant under the Evidence Act, 1872. Relevant extract of the said judgment is as under:

“3. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines “inquiry” to mean “every inquiry, other than a trial conducted under this Code by a Magistrate or court”. Clause (a) of Section 2 gives the definition of “investigation” and it says that investigation includes “all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorised by a Magistrate in this behalf”. Section 4 provides:

- “4. (1) All offences under the Penal Code, 1860 shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.
 (2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.”

It is apparent from this section that the provisions of the Criminal Procedure Code are applicable where an offence under the Penal Code, 1860 or under any other law is being investigated, inquired into, tried or otherwise dealt with. Then we come straight to Section 162 which occurs in Chapter XII dealing with the powers of the police to investigate into offences. That section, so far as material, reads as under:-

“162. (1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:-

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the court, by the prosecution, to contradict such witness in the manner provided by Section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of Section 32 of the Indian Evidence Act, 1872, or to affect the provisions of Section 27 of that Act.”

It bars the use of any statement made before a police officer in the course of an investigation under Chapter XII, whether recorded in a police diary or otherwise, but, by the express terms of the section, this bar is applicable only where such statement is sought to be used “at any inquiry or trial in respect of any offence under investigation at the time when such statement was made”. If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding other than an inquiry or trial or even at an inquiry or trial but in respect of an offence other than that which was under investigation at the time when such statement was made, the bar of Section 162 would not be attracted. This section has been enacted for the benefit of the accused, as pointed out by this Court in *Tahsildar Singh v. State of U.P.* it is intended “to protect the accused against the use of statements of witnesses made before the police during investigation, at the trial presumably on the assumption that the said statements were not made under circumstances inspiring confidence”. This Court, in *Tahsildar Singh* case approved the following observations of Braund, J. in *Emperor v. Aftab Mohd. Khan*:

“As it seems to us it is to protect accused persons from being prejudiced by statements made to police officers who by reason of the fact that an investigation is known to be on foot at the time the statement is made, may be in a position to influence the maker of it, and, on the other hand, to protect accused persons from the prejudice at the hands of persons who in the knowledge that an investigation has already started, are prepared to tell untruths”

and expressed its agreement with the view taken by the Division Bench of the Nagpur High Court in *Baliram Tikaram Marathe v. Emperor* that “the object of the section is to protect the accused both

against overzealous police officers and untruthful witnesses". Protection against the use of statement made before the police during investigation is, therefore, granted to the accused by providing that such statement shall not be allowed to be used except for the limited purpose set out in the proviso to the section, at any inquiry or trial in respect of the offence which was under investigation at the time when such statement was made. But, this protection is unnecessary in any proceeding other than an inquiry or trial in respect of the offence under investigation and hence the bar created by the section is a limited bar. It has no application, for example in a civil proceeding or in a proceeding under Article 32 or 226 of the Constitution and a statement made before a police officer in the course of investigation can be used as evidence in such proceeding, provided it is otherwise relevant under the Indian Evidence Act. There are a number of decisions of various High Courts which have taken this view and amongst them may be mentioned the decision of Jaganmohan Reddy, J. in Malakala Surya Rao v.G. Janakamma. The present proceeding before us is a writ petition under Article 32 of the Constitution filed by the petitioners for enforcing their Fundamental Rights under Article 21 and it is neither an "inquiry" nor a "trial" in respect of any offence and hence it is difficult to see how Section 162 can be invoked by the State in the present case. The procedure to be followed in a writ petition under Article 32 of the Constitution is prescribed in Order XXXV of the Supreme Court Rules, 1966, and sub-rule (9) of Rule 10 lays down that at the hearing of the rule nisi, if the court is of the opinion that an opportunity be given to the parties to establish their respective cases by leading further evidence, the court may take such evidence or cause such evidence to be taken in such manner as it may deem fit and proper and obviously the reception of such evidence will be governed by the provisions of the Indian Evidence Act. It is obvious, therefore, that even a statement made before, a police officer during investigation can be produced and used in evidence in a writ petition under Article 32 provided it is relevant under the Indian Evidence Act and Section 162 cannot be urged as a bar against its production or use. The reports submitted by Shri L.V. Singh setting forth the result of his investigation cannot, in the circumstances, be shut out from being produced and considered in evidence under Section 162, even if they refer to any statements made before him and his associates during investigation, provided they are otherwise relevant under some provision of the Indian Evidence Act."

61. With reference to police diaries and Section 172 of the Cr.P.C., the Supreme Court in ***Khatri*** (supra) held as under:-

"...These reports are clearly relevant under Section 35 of the Indian Evidence Act which reads as follows:-

"35. An entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register or record is kept, is itself a relevant fact."

These reports are part of official record and they relate to the fact in issue as to how, and by whom the twenty-four under-trial prisoners were blinded and they are admittedly made by Sh L.V. Singh, a public servant, in the discharge of his official duty and hence they are plainly and indubitably covered by Section 35. The language of Section 35 is so clear that it is not necessary to refer to any decided cases on the interpretation of that section, but we may cite two decisions to illustrate the applicability of this section in the present case. The first is the decision of this Court in Kanwar Lal Gupta v. Amar Nath Chawla. There the question was whether reports made by officers of the CID (Special Branch) relating to public meetings covered by them at the time of the election were relevant under Section 35 and this Court held that they were, on the ground that they were (SCC p. 667) "made by public servants in discharge of their official duty and they were relevant under the first part of Section 35 of the Evidence Act, since they contained statements showing what were the public meetings held by the first respondent". This Court in fact followed an earlier decision of the Court in P.C.P. Reddiar v. S. Perumal. So also in Jagdat v. Sheopal, Wazirhasan, J. held that the result of an inquiry by a Kanungo under Section 202 of the Code of Criminal Procedure, 1898 embodied in the report is an entry in a public record stating a fact in issue and made by a public servant in the discharge of his official duties and the report is therefore admissible in evidence under Section 35. We find that a similar view was taken by a Division Bench of the Nagpur High Court in Chandulal v. Pushkar Rajwhere the learned Judges held that reports made by Revenue Officers, though not regarded as having judicial authority, where they express opinions on the private rights of the parties are relevant under Section 35 as reports made by public officers in the discharge of their official duties, insofar as they supply information of official proceedings and historical facts. The Calcutta High Court also held in Lionell Edwards Limited v. State of W.B. that official

correspondence from the Forest Officer to his superior, the Conservator of Forests, carried on by the Forest Officer in the discharge of his official duty would be admissible in evidence under Section 35. There is therefore no doubt in our mind that the reports made by Sh L.V. Singh setting forth the result of the investigation carried on by him and his associates are clearly relevant under Section 35 since they relate to a fact in issue and are made by a public servant in the discharge of his official duty. It is indeed difficult to see how in a writ petition against the State Government where the complaint is that the police officials of the State Government blinded the petitioners at the time of arrest or whilst in police custody, the State Government can resist production of a report in regard to the truth or otherwise of the complaint, made by a highly placed officer pursuant to the direction issued by the State Government. We are clearly of the view that the reports made by Shri L.V. Singh as a result of the investigation carried out by him and his associates are relevant under Section 35 and they are liable to be produced by the State Government and used in evidence in the present writ petition. Of course, what evidentiary value must attach to the statements contained in these reports is a matter which would have to be decided by the court after considering these reports. It may ultimately be found that these reports have not much evidentiary value and even if they contain any statements adverse to the State Government, it may be possible for the State Government to dispute their correctness or to explain them away, but it cannot be said that these reports are not relevant. These reports must therefore be produced by the State and taken on record of the present writ petition. We may point out that though in our order dated February 16, 1981 we have referred to these reports as having been made by Shri L.V. Singh and his associates between January 10 and January 20, 1981 it seems that there has been some error on our part in mentioning the outer date as January 20, 1981 for we find that some of these reports were submitted by Shri L.V. Singh even after January 20, 1981 and the last of them was submitted on January 27, 1981. All these reports including the report submitted on December 9, 1980 must therefore be filed by the State and taken as forming part of the record to be considered by the court in deciding the question at issue between the parties.”

62. The Supreme Court in *Vinay D. Nagar vs. State of Rajasthan*, (2008) 5 SCC 597, again held that bar of Section 162 of the Cr.P.C. is with regard to the admissibility of the statement recorded of a person by the police officer under Section 161 Cr.P.C. and by virtue of Section 162 Cr.P.C. would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. The relevant extract of the said decision is as under:-

“14. On account of Section 162 CrPC, a statement made by any person to a police officer in the course of investigation under Chapter XII, if reduced into writing, will not be signed by the person making it, nor such statement recorded or any part thereof be used for any purpose at any inquiry or trial in respect of any offence under investigation at the time when such statement was made. Such statement may be used by an accused and with the permission of the court by the prosecution to contradict the witness whose statement was recorded by the police in the manner provided under Section 145 of the Evidence Act and can also be used for re-examination of such witness for the purpose only of explaining any matter referred to in his cross-examination. Bar of Section 162 CrPC of proving the statement recorded by the police officer of any person during investigation however shall not apply to any statement falling within the provision of Clause (1) of Section 32 of the Evidence Act, nor shall it affect Section 27 of the Evidence Act. Bar of Section 162 CrPC is in regard to the admissibility of the statement recorded of a person by the police officer under Section 161 CrPC and by virtue of Section 162 CrPC would be applicable only where such statement is sought to be used at any inquiry or trial in respect of any offence under investigation at the time when such statement was made.

15. In Khatri (IV) v. State of Bihar this Court has held that Section 162 CrPC bars the use of any statement made before the police officer in the course of an investigation under Chapter XII, whether recorded in the police diary or otherwise. However, by the express terms of Section 162, this bar is applicable only where such statement is sought to be used “at any inquiry or trial” in respect of any offence under investigation at the time when such statement was made. If the statement made before a police officer in the course of an investigation under Chapter XII is sought to be used in any proceeding, inquiry or trial in respect of an offence other than which was under investigation at the time when such statement was made, the bar of Section 162 will not be attracted.”

63. It is in the light of the aforesaid principles that this Tribunal is to examine whether there is sufficient cause for declaring MLJK-MA as an unlawful association. It needs to be borne in mind that the inquiry before this Tribunal does not entail adjudicating the guilt of the accused in the various cases referred to by the Central governments, but rather assessing the adequacy of material before the Central Government to designate MLJK-MA as an unlawful association.

VI. PROCEDURE FOLLOWED BY THIS TRIBUNAL

64. Consequently, upon due consideration of the aforesaid Notification No. S.O. 5462(E), dated 27th December, 2023 and Notification No. S.O. 167(E), dated 15th January, 2024, this Tribunal held a preliminary hearing on 02.02.2024, whereupon on a consideration of the material placed on record by the Central Government, notice under Section 4(2) of the Act was issued to the association (MLJK-MA) to show cause, within a period of 30 (thirty) days, as to why the association ought not to be declared as an unlawful association. The notices issued were given due publicity as required under Section 3(4) of the Act.

65. The Gazette Notification dated 27.12.2023 was also published in two National Newspapers (all India Edition), out of which one was in English while the other was in Hindi. The said notification was also published in two local newspapers in vernacular language having wide circulation in the States where the activities of the MLJK-MA were or are believed to be ordinarily carried out. The method of affixation and proclamation by beating of drums, as well as loudspeakers, was also adopted. Proclamation was made at the last known address of the MLJK-MA along with all their leaders, members, factions, wings and front organization as well as that of their principal office bearers.

66. The notice issued by the Tribunal along with the Gazette Notification dated 27.12.2023 was displayed on the notice board of the Deputy Commissioner/District Magistrate/Tehsildar in all the district headquarters of the States where the activities of the association were or are believed to be ordinarily carried on. Help of All-India Radio and electronic media of the State edition was also taken. Announcements were made through radio / electronic media at prime time.

67. Apart from the above, notices were also issued to the Union Territory of Jammu and Kashmir through its Chief Secretary.

68. The Registrar attached to the Tribunal was directed to ensure the compliance of the service of notice issued to MLJK-MA in the manner indicated. The Registrar was directed to file an independent report in that behalf before the next date of hearing, i.e. 04.03.2024.

69. Accordingly, the Union Territory of Jammu and Kashmir filed its affidavit along with supporting documents contained in Envelopes-E1 to E7 containing therein Annexures D1 to D7 as proof of service, affirming that service had been effected as directed by the Tribunal on 02.02.2024. Learned ASG for the Union of India and learned counsel for the Union Territory of Jammu and Kashmir were heard and this Tribunal recorded the satisfaction as regards effecting of service in compliance of the order dated 02.02.2024.

70. The Registrar, vide his report dated 26.02.2024, also confirmed service of notice issued by the Tribunal.

71. This Tribunal having satisfied itself that the service had been effected on MLJK-MA as per the directions contained in the order dated 02.02.2024, as noted earlier, the matter was posted for hearing on 04.03.2024, on which date Ms. Warisha Farasat, Advocate appeared before this Tribunal and stated that she was in receipt of a telephonic request from his client (Masarat Alam) and/or his family members to appear in this matter as she was already representing him in some other matter in the Delhi High Court and she sought some further time to obtain specific instructions (if any) *qua* the present matter. Further proceedings were fixed on 11.03.2024 at Delhi High Court.

72. On 11.03.2024, Ms. Warisha Farasat submitted that she had instructions to appear on behalf of the concerned association. She submitted that a *vakalatnama* on behalf of the concerned association would be filed within a period

of three days from 11.03.2024. Upon her filing such *vakalatnama*, learned counsel for the UOI was directed by this Tribunal to supply following to the counsel for the concerned association:-

- (i) A copy of the notification made under Section 3 (1) of Unlawful Activities (Prevention) Act, 1967;
- (ii) The background note, as filed before this Tribunal in terms of Section 5 (ii) of the Unlawful Activities Prevention Rules, 1968.

73. Learned counsel for the association submitted that upon receipt of the aforesaid documents, a reply on behalf of the association would be filed latest within a period of three weeks from 11.03.2024.

74. In the meantime, the Central Government was also directed to file its affidavit/s along with documents in support of the grounds on which the concerned association had been declared as unlawful. It was submitted by learned ASG, appearing for the UOI, that in the first instance, affidavits of five witnesses from the Union Territory of Jammu & Kashmir would be filed, covering 13 FIRs referred to in the notification and the matter was listed for 04.04.2024.

75. The matter was thereafter listed on 22.03.2024 upon mentioning by the Union of India, whereby the learned ASG informed the Tribunal that they had filed an application [being No.1/MLJK-MA/VA(P)T] for modification of the order dated 11.03.2024 with the following prayers:-

- "a) Allow the claim of privilege made by the Central Government in respect of the confidential 'background note' submitted before this Hon'ble Tribunal alongwith the reference vide its letter dated 24.01.2024 under Rule 3(2) of the UAPA Rules r/w S. 123 of the Evidence Act, 1872; and*
- b) Modify para 2 of the order dated 11.03.2024 to the extent that the confidential 'background note' submitted by the Central Government before this Hon'ble Tribunal along with the present Reference shall not be shared/served to any party contending/challenging notification number S.O.5462(E) dated 27.12.2023 issued by the Central Government declaring 'MLJK-MA' as Unlawful Association under the provisions of UAPA; and*
- c) Pass such other and further order as this Hon'ble Tribunal deems fit and proper."*

76. Consequent upon filing of response by the association to the said application and after hearing arguments from both sides, order in the aforesaid application was reserved and the matter was posted for 08.04.2024 with the direction to the parties to file written synopsis on or before 05.04.2024.

77. On 10.04.2024, the application No.1/MLJK-MA/VA(P)T, filed by the Union of India was dismissed by this Tribunal vide a detailed order, and the Registrar of the Tribunal was directed to supply the copy of the background note as also a copy of the notification issued under Section 3(1) of the UAPA, 1967 to the counsel for the concerned association. Learned counsel for the association sought further time to file its reply/response to the show cause notice issued under Section 4(2) of UAPA, 1967 within a period of two weeks, i.e., on or before 24.04.2024 and the matter was listed for recording of statement of witnesses on 30.04.2024, on which date the statements of following witnesses/officers of the UT of Jammu & Kashmir were recorded:-

Sl. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Ashaq Hussain Dar, SDPO, Zakoora, Srinagar	PW-1, Ex.PW1/A, dated 22.04.2024	Part IV-B, Vol-I, Pages 4 to 53
2.	Mohd, Ashrif, SDPO, Saddar Zone, Srinagar, Kashmir	PW-3, Ex-PW3/A, dated 22.04.2024	IV-B, Vol-I, Pages 82-139

78. The cross-examination of the aforesaid witnesses was also allowed which was conducted by the learned counsel for the organization, i.e., MLJK-MA on 30.04.2024 itself. Both the Union of India and the Association furnished their respective lists of witnesses and the schedule for further proceedings was fixed. The list of witnesses submitted on behalf of the association was as under:-

Sl. No.	Name of the witness	Witness no.
1.	Sh. Farooq Ahmad Bhat, Tawheed Abad Sopore, Jammu & Kashmir	RW-1
2.	Sh. Feroz Ahmad Khan, Kaakpura, Pulwama, Jammu & Kashmir	RW-2
3.	Sh. Sajad Ahmad Navoo, Sumbal Naidkai, Jammu & Kashmir	RW-3
4.	Ms. Suman, Pinglish Tral, Pulwama, Jammu & Kashmir	RW-4

It is worthwhile to mention here that learned counsel for association requested that these four witnesses be examined/cross-examined at Srinagar citing inability of these witnesses to come to depose at Delhi.

79. On 01.05.2024, following two witnesses/officers of the UT of Jammu & Kashmir were examined and cross-examined:-

Sl. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Junaid Wali, SDPO, M.R. Gunj, Kashmir	PW-2, Ex. PW2/A, dt. 22.04.2024	Part IV-B, Vol-I, Pages 56-78
2.	Mr. Shabir Ahmad Khan, Superintendent of Police, South Zone, Srinagar	PW-4, Ex.PW4/A, dt.22.04.2024	Part IV-B, Vol-I, Pages 143-204

80. On 03.05.2024, examination and cross-examination of the following witnesses/officers of the UT of Jammu & Kashmir was conducted:-

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mohd. Ameen Bhat, Deputy Superintendent of Police, Kupwara	PW-5, Ex. PW5/A, dt.01.05.2024	Part IV-B, Vol-II, Pages 206-222
2.	Sh. Zaheer Abbas, SDPO, Nehru Park, Srinagar	PW-6, Ex.PW6/A, 01.05.2024	Part IV-B, Vol-II, pages 225-250

81. On 08.05.2024, statements of following witnesses were recorded and they were cross-examined by the learned counsel for the association:-

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Sandeep Bhat, S.P., Bandipora	PW-9, Ex. PW9/A, dated 04.05.2024	Part IV-B, Vol-II, Pages 254-346
2.	Mr. Saqib Gani, Dy. S.P., Budgam Hqrs.	PW-10, Ex.PW10/A dated 04.05.2024	Part IV-B, Vol-II Pages 349-370

82. On 09.05.2024, following four witnesses were examined and cross examined:-

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Mr. Sarfaraz Bashir, SDPO, Sopore	PW-11, Ex. PW11/A, dated 01.05.2024	Part IV-B, Vol-III Pages 373-401
2.	Mr. Hari Prasad KK, SDPO, Kothibagh	PW-12, Ex. PW12/A dated 04.05.2024	Part IV-B, Vol-III Pages 405-463
3.	Mohd. Nawaz Khandey, Dy.S.P., Pulwama	PW-13, Ex.PW13/A dated 05.05.2024	Part IV-B, Vol-III Pages 466-499
4.	Mr. Sajad Ahmad Sheikh, SP Hqrs, Anantnag	PW-14, Ex. PW14/A dated 01.05.2024	Part IV-B, Vol-III Pages 502-529

83. On 15.05.2024, following witnesses were examined and cross-examined:-

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Sh. Braj Bhushan Pathak, Dy. SP NIA, New Delhi	PW-7, Ex.PW7/A dated 14.05.2024	Part IV-B, Vol-VI & VII Pages 837-1389
2.	Sh. Syed Yasir Qadri, Additional Superintendent of Police, Baramulla	PW-15, Ex.PW15/A dated 10.05.2024	Part IV-B, Vol-IV Pages 536-632
3.	Sh. Satish Kumar, SDPO, Handwara	PW-16, Ex. PW16/A dated 13.05.2024	Part IV-B, Vol-IV Pages 635-674
4.	Sh. Mohammad Saleem Bhat, Dy. S.P., Kralgund	PW-17, Ex. PW17/A dated 17.05.2024	Part IV-B, Vol-IV Pages 676-710

84. In the meantime, the learned counsel for the association submitted (on 14.05.2024) that out of the four witnesses, following witnesses had been detained in custody by the Jammu & Kashmir Police:-

“RW-2 (Sh. Feroz Ahmad Khan) – The said witness was detained on the evening of 11.5.2024 by the Jammu & Kashmir Police, P.S. Khanyr. Information to this effect was stated to have been given to the learned counsel for the association by the brother of the said witness. Today, it is submitted that late yesterday evening, information was received that the aforesaid witness was released from custody on 14.5.2024. This information is also stated to have been received by learned counsel, from the brother of the said witness.

RW-3 (Sh. Sajad Ahmad Navoo) – Learned counsel for the association states that this witness was arrested/detained on 08.5.2024 by Jammu & Kashmir Police, P.S. Sumbal. Learned counsel submits that this information was given to her by the wife of the said witness telephonically.”

85. Citing the aforesaid reasons, the learned counsel for the association submitted that it had not been possible for her to file the affidavits of evidence of the concerned witnesses, who are to depose on behalf of the association and that an endeavour shall be made to ensure that the said witnesses appear for recording of their statements before the Tribunal on the date fixed at Srinagar on 20.05.2024 and 21.05.2024.

86. Mr. Rajat Nair, learned counsel appearing on behalf of the Union of India, submitted that no such arrest/detention, as alleged by the learned counsel for the association, had, in fact, taken place and submitted that he would file an appropriate affidavit in this regard and further stated that completely false and fictitious allegations had been made by the learned counsel for the association to impede the proceedings before this Tribunal to avoid the inevitable consequences of not being able to adduce any evidence in support of its contentions.

87. Both the counsel for Union of India as also the association were given liberty to file their respective affidavits in support of their submissions. It was once more reiterated that recording of witnesses of the association shall take place at Srinagar as per the schedule fixed (i.e., on 20.05.2024 and 21.05.2024) and a public notice to this effect had already been issued.

88. In the meantime, examination and cross-examination of the following witnesses was recorded on 16.05.2024 at Delhi:-

S. No.	Name of Witness	Details of Affidavit along with date	Affidavits kept in volumes and at pages
1.	Sh. Mayank Arora, Assistant Director, Enforcement Directorate	PW-8, Ex.PW8/A, dated 13.05.2024	Part IV-B, Vol-V Pages 712-776
2.	Sh. Rajesh Kumar Gupta, Director (Counter Terrorism), MHA.	PW-19, Ex. PW19/A, dated 14.05.2024	Part IV-B, Vol-V Pages 778-834

89. As noted earlier, the hearing of the Tribunal was fixed at Srinagar on 20.05.2024 & 21.05.2024 at the specific request of the learned counsel for the association. On 20.05.2024, the learned counsel for the association expressed

her inability to produce any witness and submitted that an endeavour is being made to produce at least one witness for examination on the next day (i.e., 21.05.2024). Accordingly, the matter was renotified for 21.05.2024.

90. On 21.05.2024 also, the learned counsel for the association expressed her inability to produce any witness to depose on behalf of the association. In the absence of any witness, to utilize the time, learned counsel for the association advanced her preliminary arguments.

91. It is also important to be noted that due publicity for the aforesaid hearing dates was given by publishing the same in various newspapers/publications having circulation locally. In order to facilitate deposition of any witness who wishes to depose on behalf of the association, proper security arrangements, i.e., one male and one female staff of J&K Police and an officer of this Tribunal, had also been deputed at the gate of the hearing venue. Besides, CCTV cameras were also installed at the gate of the premises where the hearing was conducted so that the entry of the independent witnesses, if any, who may come to depose, can be facilitated/ensured.

92. To justify the omissions/failure on the part of the association to adduce any evidence, learned counsel for the association referred to the circumstances as referred to in the order dated 15.05.2024. However, no affidavit in support of the submission/s recorded in the said order was filed on behalf of the association or any of its office bearers, despite the liberty granted vide the said order dated 15.05.2024.

93. On the other hand, affidavits of Ms. P. D. Nitya, SSP, Pulwama and Mr. Lakshay Sharma, SSP, Bandipora, Kashmir were filed on behalf of the Union of India refuting the allegations made by the learned counsel for the association as recorded in the order dated 15.05.2024. An affidavit of Mr. Showkat Ahmad Dar, JKSP, Superintendent of Police, North Zone, Srinagar dated 20.05.2024 was also filed. In addition, it was submitted that an affidavit of the Inspector General of Police, Kashmir Range, would also be filed during the course of the day.

94. Learned counsel for the association submitted that the contents of the aforesaid affidavit/s filed on behalf of the Union of India corroborated her submissions as recorded in the order dated 15.05.2024. The same was, however, refuted by Mr. Rajat Nair, learned counsel for the Union of India. Recording of evidence was concluded and the matter was fixed for arguments on 24.05.2024 at Delhi, on which date learned ASG concluded her arguments and the matter was posted for 27.05.2024. On 27.05.2024, learned counsel for the association concluded her arguments and Mr. Rajat Nair, learned counsel for the Union of India concluded his rejoinder arguments, and the final order was reserved.

VII. EVIDENCE ADDUCED BEFORE THE TRIBUNAL ON BEHALF OF THE CENTRAL GOVERNMENT, INCLUDING CROSS EXAMINATION OF THE CONCERNED WITNESSES

PW-1

95. **Mr. Ashaq Hussain Dar (PW-1)** tendered his affidavit as **Ex.PW-1/A**; he stated that he is posted as a Sub-Divisional Police Officer at Zakoora, Srinagar and he is the Supervisory Officer in respect of FIR Nos.34/2006 and 60/2010. He deposed as under:-

- i) FIR No.34/2006 dated 06.05.2006 was registered at PS Nigeen U/s 10 of CL Act, U/s 13 of UAPA Act and U/s 153-A of RPC to the effect that SI Sajid Ali, alongwith his team and Column nafri of SP Hazratbal were conducting patrolling at KMD Adda Hazratbal. During the patrolling, SHO PS Nigeen received information through reliable sources that some persons affiliated with Hurriyat Conference, namely, Masarat Alam Bhat, Hakim Ab. Rashid, Mohd. Saleem Wani, Asiya Andrabi and Fahmeeda Sofe had entered the premises of University of Kashmir and delivered a provocative speech to the students of the University and had also raised slogans in favour of Pakistan like, "Pakistan Zindabad", "Jive Jive Pakistan" and that apart from raising anti-national slogans, they had also provoked the

students to participate and indulge in the protest against the Union of India. The said Hurriyat leaders also raised slogans on the sexual incident of Habakadal. Resultantly, the FIR was registered, investigation was carried out and Masarat Alam Bhat was arrested on 12.11.2009. On 20.11.2009, he was also booked under Jammu & Kashmir Public Safety Act, 1978 (PSA) vide PSA Order No.DMS/PSA/54/2009 dated 19.11.2009 and was lodged in Central Jail, Srinagar and thereafter he was sent to Tihar Jail, New Delhi in an NIA Case No.RC-10/2017/NIA/DLI. Statements of other witnesses were also recorded under Sections 161 and 164 of Cr.P.C., who have corroborated the incident. The chargesheet (Ex.PW1/2) dated 28.12.2022 stands filed in the jurisdictional court.

- ii) FIR No.60/2010 dated 11.09.2010 was registered at P.S. Nigeen U/s 148, 336, 332, 436, 427, 153, 153A of RPC & U/s 13 of UAPA and U/s 2 of PPD Act on the basis of a reliable information that unlawful gathering was being held in the vicinity of Assar Sharief Dargah, Hazratbal by the members of the Tehreek commanded by Masarat Alam Bhat alongwith other members, namely, Mehraj-Ud-din Kalwal @ Raja Kalwal, Suhail @ Poison and Saqib Banday. The aforesaid persons raised anti-India slogans and tried to break sovereignty of the nation and that the said members also pelted stones on the guard personnel and inflicted injury on them who were guarding the Dargah Shrine. They also set ablaze the house which was being used as a Wireless Centre of the Police and also the bedding of the Police personnel who were guarding the Shrine. Resultantly, the FIR was registered, investigation was carried out and statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the facts of the case. The chargesheet (Ex.PW1/10) stands filed in the jurisdictional court.
- iii) He has relied upon the certified true copies of the FIR Nos.34/2006 and 60/2010 alongwith their true English Translations and the charge-sheets filed pursuant to the above FIRs, copies of the statements of witnesses recorded under Section 161 and 164 of Cr.P.C. alongwith their true English Translation, Seizure Memos, which have been exhibited as Ex. PW1/1 to PW1/14A in the present proceedings.

96. Ms. Warisha Farasat, learned counsel for the association cross examined PW-1 on 30.04.2024. The same is reproduced hereunder:

"I have read the background note furnished to this Tribunal under Rule 5(ii) of the UAP Rules, 1968.

The statement that I have made in para 2 of my affidavit is not based on the said background note submitted to this Tribunal. The same is based on the knowledge derived by me as a police officer during my postings at different places in the State of Jammu & Kashmir.

It is incorrect to suggest that whatever I have deposed in my affidavit is not only based on my personal knowledge but is also based on the background note prepared by the Central Government.

The statements under Section 161 Cr.P.C referred to in para 9 of my affidavit were not recorded by me; they were recorded by the concerned I.O. The statements under Section 164 Cr.P.C referred to in para 9 of my affidavit were not recorded in my presence or under my supervision.

The statements under Section 161 Cr.P.C and 164 Cr.P.C referred to in para 13 of my affidavit were not recorded in my presence or under my supervision. No statement of any independent witness under Section 161 Cr.P.C was recorded. The persons, whose statements under Section 161 Cr.P.C were recorded, were the officials, who are eyewitnesses.

Q. Do you know the whereabouts of Dr. Ashiq Hussain Faktoo @ Mohd. Qasim Faktoo whose name is mentioned in para 2 of your affidavit?

A. I need to check the records, as to his present whereabouts. I am aware that Dr. Ashiq Hussain Faktoo @ Mohd. Qasim Faktoo is in jail. However, I do not know as to since when he has been in jail.

Q. Have you attached any Case Diary or any other documents on record to show that local witnesses were invited to give their statements in connection with the FIRs referred to in your affidavit, and they refused to give their names and addresses?

A. I am not aware whether the Case Diary contains any documents from which I can gather the information that attempt was made to record the statement of independent witnesses. No such document is attached along with my affidavit.

Q. What is the date on which the chargesheet is filed in FIR No.60/2010?

A. The chargesheet enclosed as annexure P-10 to my affidavit was filed on 20.07.2018 before the Court of Special Judge, TADA/POTA Court, Srinagar in FIR No. 60/2010 registered at PS Nigeen.

The chargesheet was filed in the concerned Court by the concerned IO and not by me. On the date on which the chargesheet was filed, I was posted in District Kulgam.

I am not aware whether the persons whose names in the seizure memo annexed alongwith my affidavit (at page 31, forming part of Ex. PW 1/8A), are the members of the proscribed association or not.

Q. How is it that the FIR No.34/2006 is dated 06.05.2006, whereas the Seizure Memo is dated 28.08.2010?

A. The Seizure Memo referred to in my affidavit was prepared in 2010 since the persons referred to therein were arrested only in the year 2010, as they were absconding earlier. The chargesheet in the FIR No. 34/2006 has been filed on 28.12.2022. The reasons for belated filing of the charge-sheet and the protracted investigation in the said FIR is that the accused persons had created an un conducive atmosphere in the State of Jammu and Kashmir, as a result of which it was difficult for the police to conduct the investigation and to apprehend the accused persons. This is the reason that the chargesheet in the matter could be filed only on 28.12.2022.

I do not remember how many State Elections were conducted during the period from 2006 to 2022.

I joined the police force in the year 2012.

Suggestion: I put it to you that you have no personal knowledge as to the factual aspects of the present FIR since it was lodged in the year 2006, i.e., much prior to your joining the police force ?

It is incorrect. (Vol) I have derived the said knowledge from the records of the case and the evidence on record.”

PW-2

97. **Sh. Junaid Wali (PW-2)** tendered his affidavit as **Ex.PW2/A**; he stated that he is posted as a Sub-Divisional Police Officer at M.R. Gunj, Srinagar, Kashmir and he is the Supervisory Officer in respect of FIR No.70/2007 dated 22.04.2007, which was registered at PS Safakadal under sections 13 and 18 of ULA(P) Act to the effect that Hurriyat(G) leaders, including Mohammad Ashraf Khan @ Sehra, Gh. Nabi Sumji welcomed the Hurriyat (G) Chairman SAS Geelani after his return from Delhi, who remained hospitalized there. They addressed the public gathering and raised anti-national slogans and in their speech made against the Constitution of India, they justified/glorified the activities of the terrorists and had also raised slogans in favour of Pakistan. Other Hurriyat leaders, including Masarat Alam Bhat, Firdous Ahmad Shah, Mohammad Shafi Lone, Mehraj-u-din, Yaseer Athie, Showkat Ahmad Hakeem, Aijaz Ahmad Kala, Mehraj-u-Din Bangroo, Mohammad Shafi Reshi had led the procession and raised the slogans against the Constitution of India and in favour of Pakistan, etc. Resultantly, the FIR was

registered, the investigation was carried out, statements of witnesses were recorded under Section 161 & 164 of Cr.P.C., who have corroborated the incident.

98. Ms. Warisha Farasat, learned counsel for the association cross examined PW-2 on 01.05.2024. The same is reproduced hereunder:-

"I am currently posted as SDPO, M. R. Gunj, Srinagar, Kashmir. FIR No.70/2007 pertains to PS Safakadal.

(Attention of the witness is drawn to paras 7 and 8 of the affidavit.)

The statements under Section 161 Cr.P.C and 164 Cr.P.C referred to in paras 7 and 8 of my affidavit were not recorded by me; they were recorded by the concerned IO.

I will have to refer to the relevant records to say as to what is the date of the seizure memo (Ex. PW 2/7) filed along with my affidavit. The seizure memo does not contain the signatures of any witness.

I have not filed the newspaper clipping referred to in the Seizure Memo along with my affidavit.

FIR No.70/2007 does not refer to any specific slogan. (Vol.) the FIR refers to the fact that the slogans were raised against the Constitution of India and in favour of Pakistan. I was not present when the slogans were raised.

I state that the chargesheet has not been filed even after 17 ½ years from the date of registration of the FIR since the atmosphere in the Kashmir Valley was not conducive. There have been incessant law and order problems, as a result of which, whenever action was sought to be taken against the leaders of the proscribed association, including the accused persons in the present FIR, there were local protests etc, which prevented the police from performing its job.

Masarat Alam has been in custody in an NIA case since June, 2019.

I cannot say whether Masarat Alam has been in continuous custody since April 2015.

It is incorrect to suggest that para 10 of my affidavit contains any false averments as regards reasons for delay in the investigation of the present FIR. It is incorrect to suggest that there has been no impediment in the completion of the investigation in view of the fact that all the witnesses are police witnesses.

Besides the present Tribunal, I have also deposed as a witness in a UAPA Tribunal concerned with the ban on another banned association, namely, Tehreek-e-Hurriyat (TeH).

It is incorrect to suggest that I have no personal knowledge as to the aspects with regard to which I have deposed in my affidavit.

In 2007, I was employed as a teacher in a Government School, Baramullah."

PW-3

99. **Sh. Mohd Ashrif (PW-3)** tendered his affidavit as **Ex.PW3/A**; he stated that he is posted as a Sub-Divisional Police Officer at Saddar, Srinagar, Kashmir and he is the Supervisory Officer, He deposed about the following FIRs:-

- i) FIR No.238/1995 dated 29.06.1995 was registered at PS Saddar U/s 436/511/148/149/336/427 of RPC on the written complaint received from HC Mohd. Aslam posted at sub-ail Rangreth that 28.06.1995 was a meet day of jail prisoners with their relatives. However, as routine deployment could not reach on time and some delay occurred in holding the meetings of the jail inmates. The inmates (i) Masarat Hussain

- Bhat (ii) Javaid Ah. Basmati (iii) Mohd. Ameen Shora (iv) Musaib Qadir Zargar (v) Mohd. Shafi Ganie (vi) Mohd. Shafi (Ab. Majeed Dar (viii) Ayaz Ah Dar (ix) Ali Mohd. Dar and (x) Mohd. Ashraf Bhat instigated the other inmates to set ablaze the jail and in the said attempt, has also set ablaze their quilts and has resorted to violence by breaking the glass windows and that the above accused persons had also pelted stones on the CIP personnel and raised slogans. Resultantly, the FIR was registered, investigation was conducted, statements of witnesses were recorded under Section 161, who have corroborated the incident.
- ii) FIR No.160/1996 dated 31.03.1996 was registered at PS Saddar U/s 336/148 of RPC upon a written complaint that 25.03.1996 was a meet day of jail prisoners with their relatives and the meetings were going on smoothly and in the last shift, Mohd. Shafi Ganie, Masarat Hussain Bhat and Musaib Qadir came in the shed to meet their relatives. When the said prisoners were returning back to jail, one of the accused prisoners, Mohd. Shafi Ganie, met with the complainant, who informed the accused prisoner that his lodgement has been changed and he has to go to other jail, the said prisoner started shouting and threatening the complainant for causing law and order situation in the jail. He further added that the main gate was closed and the other accused prisoners and inmates, i.e., Masarat Hussain and Musaib Qadir Zargar put Mohd. Shafi Ganie on their shoulders and made him jump the jail fencing and when the lock was opened by the Constable, the said two other accused prisoners also went inside the jail and started pelting stones upon the CISF personnel and raised slogans “HM Zindabad”, Hindustan Hai Hai”, which continued for 5-10 minutes and this had caused law and order situation inside the jail and instigated the other inmates also. The FIR was registered, investigation was carried out, statements of the witnesses was recorded under Section 161 Cr.P.C., who have corroborated the incident.
- iii) FIR No.284/1999 dated 15.09.1999 was registered at PS Saddar U/s 147/341/153A of RPC to the effect that a mob led by Mohd. Ashraf Sehrai, Abdul Ahad Waza, Ad. Jabbar, Masarat Hussain @ Masarat Alam, raising anti-national slogans, proceeded towards Srinagar City and caused law and order situation due to which the traffic and movement of general public had to be halted. The said march is stated to have been made without prior permission or intimation and thus the same was unlawful leading to the registration of the FIR, which followed investigation, recording of statements of witnesses under Section 161 of Cr.P.C., who have corroborated the incident.
- iv) FIR No.128/2010 dated 27.06.2010 was registered at PS Saddar U/s 120-B, 121-A, 124-A, 505 & 506 of RPC and Section 3 of PINHA Act on the basis of an information that leaders associated with Hurriyat Conference, i.e., (i) Masarat Alam (ii) Bashir Ahmad Bhat @ Pir Saifullah and other workers of the said organization are circulating objectionable posters at Parraypora, Srinagar and making propaganda against the Government of India as the posters contained slogans “Go India Go Back” and they have also set ablaze state as well as National Flag of the country. Consequently, the FIR was registered, investigation followed and statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident.
- v) He has relied upon the certified true copies of the FIR Nos.238/1996, 160/1996, 284/1999 and 128/2010 alongwith their true English Translations and true copies of the statements of witnesses recorded under Section 161 of Cr.P.C. alongwith their true English Translations, Seizure Memos, which have been exhibited as Ex. PW3/1 to PW3/16A in the present proceedings.

100. Ms. Warisha Farasat, learned counsel for the association cross examined PW-3 on 30.04.2024. The same is reproduced hereunder:-

"I am the Supervisory Officer in respect of the FIRs referred to in my affidavit since January, 2023.

The statements under Section 161 Cr.P.C referred to in my affidavit were recorded by the concerned I.O. and not by me. The statements under Section 164 Cr.P.C were not recorded in my presence or under my supervision.

I have read the background note submitted to this Tribunal under Rule 5(ii) of the UAP Rules, 1968. The statement made in para 2 of my affidavit is based on the background note submitted to this Tribunal and also based on the record available with the department as well as on the basis of my personal knowledge derived by me during my postings at several places in Kashmir.

Suggestion: I put it to you that the averments made in your affidavit are not based on your personal knowledge, and is based on 'news' as referred in para 5 of your affidavit.

Ans. It is incorrect to suggest that I have no personal knowledge of the incidents referred to in my affidavit and I have relied upon 'news' for the purposes of averments made by me in my affidavit.

The charge-sheet in FIR No.238/1995 has been submitted in the concerned court. I have not filed the said charge-sheet, since the certified copy thereof was not made available by the concerned Court, although I had applied for the same. It was intimated by the concerned Court that the copy of the charge-sheet is not part of the Court record.

I am not aware as to the status of trial in the said FIR; even the charge-sheet could not be obtained by me from the Court.

I am not aware as to whether the charge-sheet in FIR No.160/1996 has been filed or not. Many of the accused persons have been absconding and the proceedings under Section 299 Cr.P.C have been going on against the said accused persons.

I do not know the status of the trial of such accused persons who are not absconding.

I have been part of the Jammu and Kashmir Police since the year 2018. Prior to that, I had been studying. Although I had joined the Police Force in the year 2018, the statement made in para 11 of my affidavit is based on the records of the case and based on the knowledge derived by me as to the situation prevailing in the State of Jammu and Kashmir.

I have not personally investigated the cases either against the association or its members.

Apart from this Tribunal, I have also deposed before the Tribunal constituted under the UAPA Act, 1967 pursuant to the ban on Jammu and Kashmir Democratic Freedom Party (JKDFP).

I state that no charge-sheet has been filed in FIR Nos. 284/1999 and 128/2010.

I have not put anything on record to show or reflect that the independent witnesses have refused to depose because the situation is such that independent witnesses do not come forward to depose against the members of the association and they refuse to join the investigation.

Dr. Ashiq Hussain Faktoo @ Mr. Mohd. Qasim Faktoo is presently lodged in Central Jail, Srinagar since 2000 and is in continuous custody since then.

I am not a witness to the Seizure Memo which is annexed with my affidavit at page 31 forming part of Ex. PW3/2 alongwith my evidence affidavit.

I have not filed the posters as referred to in the Seizure Memo annexed at page no. 58 forming part of PW3/16, of my affidavit. They were seized or attached by the concerned I.O. and not by

me. The Seizure Memo does not contain the name of any member of the proscribed association or the name of the association itself. I am not aware as to why the Seizure Memo does not contain the name of any witness."

PW-4

101. **Sh. Shabir Ahmad Khan (PW-4)** tendered his affidavit as **Ex.PW4/A**; he stated that he is posted as a Superintendent of Police at South Zone, Srinagar, Kashmir and he is the Supervisory Officer in respect of the following FIRs. He deposed as under:

- i) FIR No.204/1992 dated 05.12.1992 was registered at PS Shaheed Gunj U/s 302 of RPC, 3/25 IA Act, 3(1) of TADA to the effect that ASI Ghulam Rasool informed about the killing of Sh. Hriday Nath Wanchoo (H.N. Wanchoo), who, in April, 1992 formed an organization called "Hindu Forum" for resolving socio-religious problems of the Kashmiri Pandits. Based on the said information the FIR was registered against unknown persons and the initial investigation revealed the role of Ashiq Hussain Faktoo @ Mohd. Qasim and various others in the killing of H.N. Wanchoo, which was done with the sole intent of causing fear and terror in the minds of the general public, especially the Kashmiri Pandits and for attaining the goal of secession of the State of Jammu & Kashmir from the Union of India and due to the influence of the accused persons and the organization and due to the prevailing situations, the State Government handed over the investigation to CBI on 21.12.1992. After investigation of the case, the chargesheet was filed, though initially the accused persons were acquitted by the Trial Court, but the prosecution has been able to secure conviction of the accused persons. Judgment of Hon'ble Supreme Court dated 30.01.2003 passed in Crl Appeal 889/2001 convicting all the accused persons has been enclosed with the affidavit (Ex.PW4/2);
- ii) FIR No.74/2010 dated 27.06.2010 was registered at PS Shaheed Gunj U/s 153-B of RPC, 13 of ULA(P) Act and 10 of CLA Act on the basis of a written docket that Const. Mohd. Ismail on behalf of ASI Gh. Rasool that while they were performing law and order duty in Zaindar Mohalla, Habakadal, they found posters affixed on electric poles and walls containing objectionable slogans contents of which were "Go India Go Back. It is further stated that on 25.06.2010, Masarat Alam, Acting Leader of APHC (G) group got published a strike/hartal programme in daily newspaper "Rising Kashmir" for pasting of posters on 27.06.2010 and thus the act of Masarat Alam was against the territory of India and against the integrity of the nation and hence the FIR was registered, investigation was conducted, incriminating material was seized, followed by recording of statements of witnesses under Section 161 of Cr.P.C., who have substantiated the charges and the chargesheet (Ex.PW4/4) dated 5.04.2023 stands filed in the jurisdictional court;
- iii) FIR No.02/2001 dated 12.01.2001 was registered at PS Karan Nagar, Srinagar, U/s 121, 122 of RPC, Section 10 of CL Act and 13 of ULA(P) Act on the basis of an information received at the Police Station that various terrorists, namely (i) Mohd. Muzafar Mirza, (ii) Peer Abdul Aziz (iii) Mohd. Sultan Shah (iv) Mohd. Yousuf Dar (v) Masarat Alam Bhat (vi) Ghulam Rasool @ Noorani (vii) Iqbal @ Farooq (viii) Showkat Ahmad Bhat @ Shakeel (ix) Zahid, headed by one Ghulam Rasool Shah @ General Abdullah (Commander of terrorist organization JeM) are active in Kashmir Valley and are working for severity of the State of Jammu & Kashmir from the Union of India and against the integrity of the nation and are challenging the sovereignty and territorial integrity of the Union of India and accession of the State of Jammu & Kashmir with it and that the miscreants are spreading terrorism in the Valley.

- iv) Consequently, FIR was registered and during investigation, accused persons, namely, (i) Mohd. Muzafar Mirza (ii) Peer Abdul Aziz (iii) Mohd. Sultan Shah, (iv) Khursheed Ahmad Choudhary (v) Mohd. Yousuf Dar were arrested and during investigation, they had confessed their affiliation with the banned terrorist organization JeM and further based on their confessional statements, following recoveries were made (i) 2 Kg of explosive substance material from Mohd. Yousuf Dar (ii) 2 Kg of explosive substance from Peer Abdul Aziz (iii) 1 Fax Machine from Mohd. Sultan Shah (iii) one remote control from Khursheed Ahmad Chowdhary (v) one wireless set from Mohd. Muzafar. The statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the charges and the chargesheet (Ex.PW4/9) dated 16.12.2004;
- v) FIR No.35/2022 dated 17.03.2022 was registered at PS Sherigarhi, Srinagar under Sections 13 of UA(P) Act and 124-A/506 of IPC on the basis of an information that Masarat Alam (Chairman APHC Geelani Group) through his associates is indulging in the activities that are prejudicial to the security and sovereignty of India and that Masarat Alam is tactfully and clandestinely through the medium of his close associates of his organization disseminates messages to his associates across the border for pronouncing the Hartal calls on different occasions which are published in the form of Press Note by PAK based media. The said activities were stated to be anti-national and prejudicial to the maintenance of peace and public tranquility. Resultantly, the FIR was registered, investigation followed, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the charges.
- vi) He has relied upon the certified true copies of the FIR Nos.204/1992, 74/2010, 02/2001 and 35/2022 alongwith their true English Translations, Judgment dated 30.01.2003 (Ex.PW4/2), charge-sheets filed in FIR Nos.74/2010 and 02/2001, copies of the statements of witnesses recorded under Section 161 of Cr.P.C. alongwith their true English Translation, Seizure Memos, Arrest Memo, which have been exhibited as Ex. PW4/1 to PW1/15A in the present proceedings.

102. Ms. Warisha Farasat, learned counsel for the association cross examined PW-2 on 01.05.2024. The same is reproduced hereunder:

"I cannot say off-hand whether the judgment dated 30.01.2003 passed in Appeal (Crl) 889 of 2001 referred to in para 7 of my affidavit contains the name of the proscribed association (MLJK) or not. I will have to read the entire judgment to say whether the said judgment refers to the name of the association or not.

I cannot tell the date on which the proscribed association [Muslim League Jammu Kashmir (Masarat Alam Faction) (MLJK-MA)] came into existence.

I cannot tell the exact date on which Dr. Ashiq Hussain Faktoo @ Mr. Mohd. Qasim Faktoo was arrested in FIR No.204/1992.

(Vol.) FIR No. 204/1992 was initially lodged at PS Shaheed Gunj, but was transferred to the CBI later on. Since I am the Supervisory Officer of the said Police Station, it is my responsibility, as a Supervisory Officer, to keep a track of the progress of the investigation and conclusion/outcome of the case.

The statements under Section 161 Cr.P.C, as referred to in para 9 of my affidavit, were not recorded in my presence or under my supervision.

I cannot say whether the statements under Section 161 Cr.P.C, as referred to in para 12 of my affidavit, contains or refer to any name of the members of the proscribed association, i.e., Muslim League Jammu Kashmir (Masarat Alam Faction)/MLJK-MA.

I state that Mr. Masarat Alam is in custody in Tihar Jail since 2019."

PW-5

103. **Mohd. Ameen Bhat (PW-5)** tendered his affidavit as Ex.PW5/A; he stated that he is posted as a Superintendent of Police, Headquarters/PC Kupwara, Kashmir. He deposed that he is the Supervisory Officer in respect of FIR No.174/2009 dated 13.11.2009 which was registered at PS Kupwara U/s 13 of ULAP Act and U/s 153-A, 120-B of RPC on the basis of a written docket sent by SHO Kupwara to the effect that the SHO alongwith his team was patrolling at Market Kupwara, when the patrolling party saw after concluding Friday Prayers, an unruly mob headed by Mir Saifullah, Maqsood Alam, Mehraj-u-Din Kalwal, Ghulam Hassan Mir, Mohammad Sayeed Shah, Mohammad Yousf Lone, Abdul Hameed Magray, Abdul Ahad Malik, Farooq Ahmad Mir proceeded from Jamia Masjid, Kupwara where the mob raised slogans and leaders delivered speeches against the State and also for the separation of Kashmir from India. Apart from raising anti-national slogans, they also provoked and instigated the public to start a war against the Government of India. Consequently, the FIR was registered, investigation carried out, statements of witnesses were recorded under Sections 161 and 164 of Cr.P.C., who have corroborated the charges.

104. He has relied upon the certified true copies of the FIR No.174/2009, alongwith its true English Translation and the copies of the statements of witnesses recorded under Section 161 and 164 of Cr.P.C. alongwith their true English Translation, which have been exhibited as Ex. PW-5/1 to PW-5/3A in the present proceedings.

105. Ms. Warisha Farasat, learned counsel for the association cross examined PW-5 on 03.05.2024. The same is reproduced hereunder:

"I know the name of the association with regard to which I am deposing today. The name of the association is MLJK."

The FIR with regard to which I am deposing was not lodged in my presence or under my supervision. The statements that were recorded pursuant to the said FIR were also not recorded in my presence.

The charge-sheet in the matter has not yet been filed in court. (Vol.) The charge-sheet has been prepared and has been sent for accord/sanction of the Government. The forwarding letter whereby the draft charge-sheet has been forwarded to the government is not presently available with me.

The FIR and statements under Section 164 Cr.P.C. recorded pursuant thereto do not refer to the name of the association/MLJK. However, as per my knowledge, some of the names referred to in the FIR are members of the association/MLJK. These are Mir Saifullah, Maqsood Alam and Mehraj u din Kalwal. I say this on the basis of my knowledge derived by me as a police officer over the last many years.

I have not filed any document/material whereby the names of these persons are reflected to be members of the association/MLJK.

It is incorrect to suggest that the persons referred to by me above are not members of MLJK and that they have been falsely implicated through this FIR.

I became the Supervisory Officer in respect of the FIR No.174/2009 only on 24.04.2024. I am currently posted as Dy. S.P. Hqs., Kupwara. I am looking after five police stations.

The names of the above persons, referred to by me in my affidavit, viz., Mir Saifullah, Maqsood Alam and Mehraj u din Kalwal, are also referred to in the statements recorded under Section 164 Cr.P.C. pursuant to the filing of FIR No.174/2009 and have been appended as Ex.PW5/2 to PW5/2A and Ex.PW5/3 to PW5/3A.

It is incorrect to suggest that the accused persons in the FIR No.174/2009 have nothing to do with the association/MLJK."

PW-6

106. **Sh. Zaheer Abbas (PW-6)** tendered his affidavit as **Ex.PW6/A**; he stated that he is posted as a Sub-Divisional Police Officer, Nehru Park, Srinagar, Kashmir. He deposed that he is the Supervisory Officer in respect of FIR No.59/2010 dated 18.10.2010 which was registered at PS Harwan, Us/ 121 of RPC, U/s 13 and 18 of ULAP Act to the effect that information received through reliable sources that General Secretary of Hurriyat "G" Group, namely, Masarat Alam Bhat S/o Ab. Majid, a prominent separatist leader, is involved in abetting the general people of Kashmir Valley during the 2010 unrests and in creating the law and order problems and to disrupt the peace and tranquility of the state by pelting stones and observing hartals/bandhs and that the separatist leader is involved in waging war against the integrity of the nation. After registration of the FIR, the investigation was started, during which accused Masarat Alam was arrested from Wangund Tailbal area, statements of witnesses were recorded under Sections 161 and 164 of Cr.P.C., who have corroborated the charges. The chargesheet (Ex.PW6/2) stands filed in the jurisdictional court on 22.12.2022.

107. He has relied upon the certified true copies of the FIR No.59/2010, alongwith its true English Translation and the copies of the statements of witnesses recorded under Section 161 and 164 of Cr.P.C. alongwith their true English Translations, Copy of Seizure Memo, and the Chargesheet which have been exhibited as Ex. PW-6/1 to PW-6/6A in the present proceedings.

108. Ms. Warisha Farasat, learned counsel for the association cross examined PW-6 on 03.05.2024. The same is reproduced hereunder:

"I have not filed the newspaper clippings referred to in the seizure memo filed as Ex.PW6/6 to PW6/6A of my affidavit (page 20 thereof). (Vol.) The said newspaper clippings are available as a part of the charge-sheet.

It is incorrect to suggest that Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo is not a member of the proscribed association, i.e., Muslim League Jammu Kashmir (Masarat Alam Faction). (Vol.) Dr. Ashiq Hussain Faktoo @ Mr. Mohd. Qasim Faktoo is the Amir of the proscribed association.

According to me, this proscribed association was formed sometime in the year 2000."

PW-7

109. **Sh. B.B. Pathak (PW-7)** tendered his affidavit as **Ex.PW-7/A**; he stated that he is serving as Deputy Superintendent of Police in the National Investigation Agency (NIA), New Delhi. He deposed that Masarat Alam @ Masarat Alam Bhat, General Secretary of MLJK-MA is involved in the illegal and anti-national activities and that the NIA has investigated the case in which anti-national and unlawful activities of accused person, namely, Masarat Alam @ Masarat Alam Bhat, as General Secretary have surfaced and that he was closely associated with SAS Geelani, the then Chairman of All Party Hurriyat Conference (APHC).

110. He stated that on 30.05.2017, the Ministry of Home Affairs issued the Order No.11011/2017-IS-IV directing the NIA to register a regular case and take up the investigation of the same as credible information was received by the Central Government that Hafiz Muhammad Saeed, Amir of Jamat-ud-Dawah and secessionist and separatist leaders, including the members/cadres of the Hurriyat Conference, have been acting in connivance with the active militants of proscribed terrorist organizations, viz., Hizb-ul-Mujahideen (HM), Dukhtaran-e-Millat, Lashkar-e-Taiba (LeT) and other terrorist organizations/associates/gangs, through various illegal channels, including hawala, for funding separatist and terrorist activities in Jammu and Kashmir through the funds so collected and as such have

entered into a larger criminal conspiracy for causing disruption in the Kashmir Valley by way of pelting stones on the security forces, systematically burning of schools, damage to public property and waging war against India and accordingly on 30.05.2017, NIA registered a case being No.RC-10/2017/NIA/DLI U/s 120B, 121 & 121A of the IPC and U/s 13, 16, 17, 18, 20, 38, 39 and 40 of the UAPA in pursuance to MHA Order No.11011/2017-IS-IV.

111. He further stated that the investigation revealed that various terrorist organizations, viz., Jammu & Kashmir Liberation Front (JKLF), HM, LeT, in connivance with various secessionist groups, particularly the AHPC and its constituents, funded by Pakistan and its agencies and terror groups, have entered into a criminal conspiracy to wage war against the Government of India and that the said Hurriyat Leaders and their supporters are following the ideology of “freedom”, i.e., secession of the State of Jammu & Kashmir from the Union of India. He further stated that the investigation further revealed that APHC was formed as a conglomerate of 26 political/social/religious organizations in 1993 to give a political mask to the secessionist activities and that this alliance has been consistently promoted and supported by Pakistan to fulfill its evil motive and establish its claim over the State of Jammu & Kashmir.

112. He has further stated in his evidence affidavit that in the year 2008, APHC split into three factions, one faction was headed by Mirwaiz and is called the APHC(M), the other is led by SAS Geelani and is called APHC(G) and the third is led by Yasin Malik, i.e., JKLF. SAS Geelani, Mirwaiz Umer Farooq and Yasin Malik had together formed the Joint Resistance Leadership (JRL) which used to promote the cause of secession of Jammu & Kashmir from the Union of India. The investigation further revealed that JRL used to disseminate the calendar of protests through newspapers and other social media platforms mentioning the dates and places of protests, demonstrations, etc. and these protest calendars, with detailed instructions of hartals, picketing, blockage of routes and roads, suspension of public transport, instructions for organizing processions and marches, writing of graffiti on the walls, exhorting people to play Azadi Taranas (Songs) and complete shutdown of markets and other economic activities, would exhort and provoke people to agitate against the State and the security forces, showing defence against the Government of India.

113. It is further stated that during investigation, protest calendar for the period 06.08.2016 to 16.08.2016 was recovered and seized during search conducted in the house of one of the leaders of APHC, namely, Altaf Ahmad Shah @ Fantoosh and the protests were very violent and led to the registration of 89 cases of stone-pelting and other unlawful activities, including arson, school burning, damage to the public property and vehicles, etc. In the said cases, 07 persons were killed, 175 persons were got injured and 366 persons involved in such activities were arrested in District Srinagar. Besides, 40 BSF personnel who were dealing with the stone-pelting also got injured from September 2016 to June 2017.

114. It is further stated in the affidavit that though APHC poses a political front, however, it is manifest that the agenda of AHPC is to create an atmosphere conducive to the fulfillment of their goal, i.e., secession of Jammu & Kashmir from the Union of India and that AHPC had entered into a criminal conspiracy and had been engaged in instigating the general public of Kashmir for taking part in violent activities to create a surcharged atmosphere in the valley, which is conducive for propagation of their secessionist agenda and it has repeatedly asked the people to observe strikes on various non-existent issues and then incited and instigated them to get involved in unlawful activities, such as stone-pelting, burning of public properties etc. The motive behind the disturbances caused by the frequent strikes and the stone-pelting incidents is stated to create such circumstances which will lead to the secession of the State of Jammu & Kashmir from the Union of India.

115. It is further stated in the affidavit that the said agenda of AHPC is reflected in its website www.hurriyatconference.com, which speaks about “Freedom Struggle” and that the “people of Jammu & Kashmir have been fighting against Indian occupation”.

116. Pursuant to the investigation, chargesheet (Ex.PW7/2) dated 18.01.2018 was filed before the court against 12 accused persons, including two designated terrorists, based in Pakistan, namely, Hafiz Muhammad Saeed, Head of banned terrorist organization (LeT), Mohd. Yusuf Shah @ Salahuddin, Head of banned terrorist organization (HM) as absconders. Chargesheet includes other accused persons, who are leaders of APHC, namely, Aftab Ahmad Shah @ Shahid-ul-Islam, Altaf Ahmad Shah @ Fantoosh (now expired), Nayeem Ahmad Khan, Farooq Ahmad Dar @ Bitta Karate, Mohammad Akbar Khanday, Raja Mehrajuddin Kalwal, Bashir Ahmad Bhat @ Peer Saifullah, including one accused Zahoor Ahmad Shah Watali, Hawala conduit who was involved in providing funds for terrorists and secessionist activities to APHC leaders, including Masarat Alam U/s 120-B, 121, 121A & 124A of IPC and Sections 13,16, 17, 18, 20, 38, 39 & 40 of UAPA and investigation in terms of Section 173(8) of Cr.P.C. is still going on.

117. It has been further stated in the affidavit that the investigation revealed that in the year 1993, Masarat Alam @ Masarat Alam Bhat son of Late Abdul Mazeed Bhat, resident of Zaindar Mohalla, Habbaqadal, Srinagar, who was one of most virulent hate-mongers for provoking and inciting youth of Jammu & Kashmir, for secession of Jammu & Kashmir from the Union of India, at the instance of Pakistani agencies, had joined Muslim League, on the inspiration of the then Chairman of Muslim League, namely, Mushtaq Ahmad Bhat, to fight for the freedom of Kashmir and due to the illegal activities of Muslim League, Masarat Alam was arrested in 1993 and remained in jail till 1997 and after release from jail, he became the General Secretary of Muslim League and revived the defunct Muslim League and with his efforts Muslim League became a part of APHC(G) in the year 1998 and he started taking part in speeches, protests, etc. on the directions of SAS Geelani.

118. The affidavit further states that after induction of Muslim League in the APHC, Masarat Alam came close to SAS Geelani and in the 1999 Parliamentary Elections, anti-election campaign was started by APHC and that Masarat Alam, alongwith SAS Geelani, Yasin Malik and other leaders were in the fore-front of that anti-election campaign and they were all arrested for disrupting the democratic process in September 1999. Masarat Alam had also taken active part in the agitations and processions organized by APHC(G) in the year 2008 on Amarnath Land dispute and vitiated peace and harmony of the valley through his vicious and vitriolic speeches and thereafter SAS Geelani gave him the responsibility of Acting General Secretary of APHC(G).

119. It is further stated in the affidavit that Masarat Alam was the master mind of “Quit Kashmir Movement” and issued calendars of protest and led violent demonstrations in the Kashmir Valley and that he instigated the youth to raise pro-Pakistan slogans and to resort to stone-pelting on the security forces and he also used to visit the houses of killed militants and injured stone-pelters in the Kashmir Valley and provoked them to take up arms for the so-called liberation of Jammu & Kashmir. He was backed and supported by the Pakistani agencies and he alongwith other accused persons, was also a recipient of funds from offshore locations for funding and fuelling secessionist and violent activities in Jammu & Kashmir. This is stated to have been established from the testimonies of protected witness “Bravo” and the documents seized during investigation.

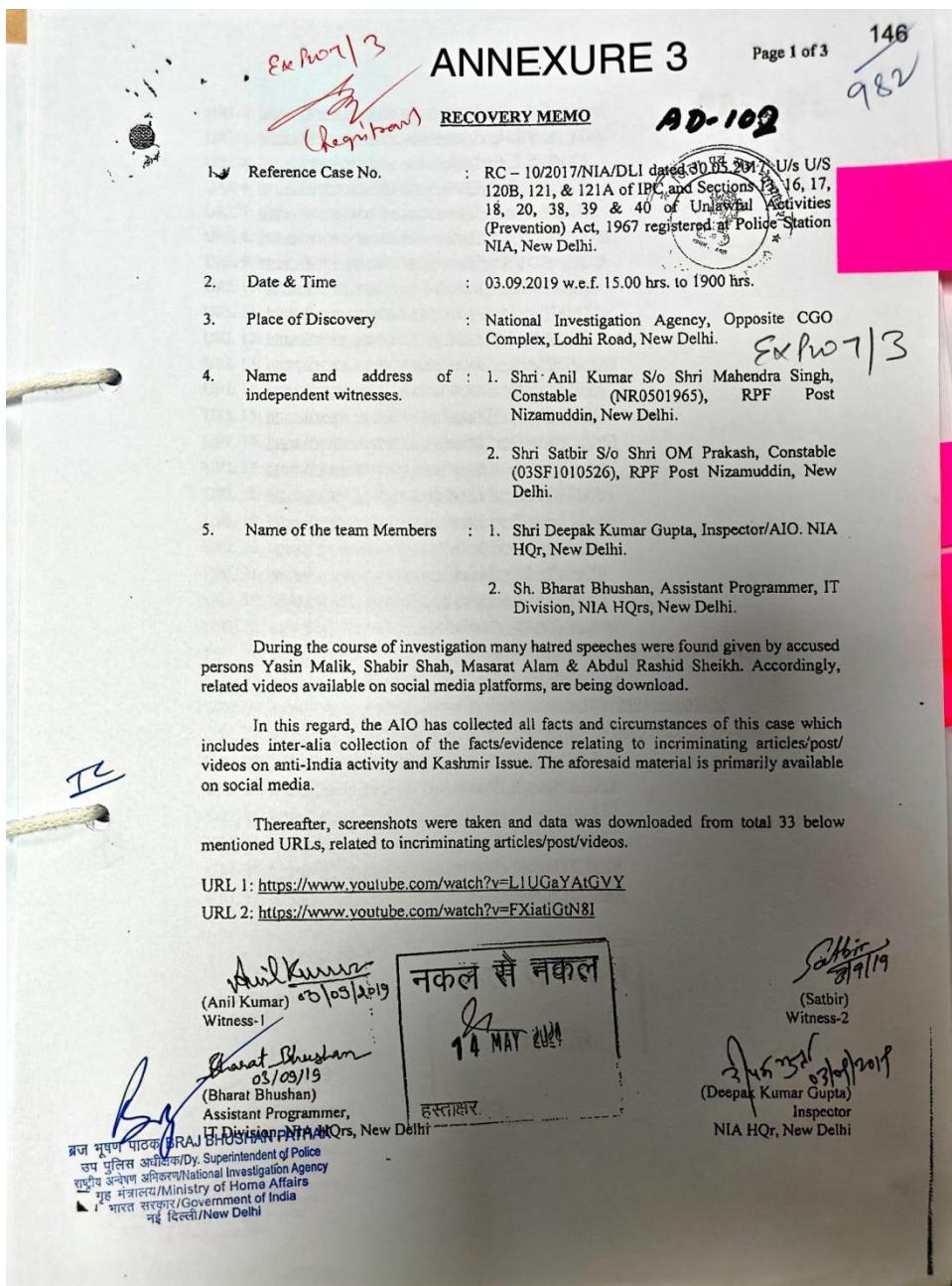
120. It is further stated that Masarat Alam’s violent secessionist intent is also reflected by the incident which happened in April, 2015 when SAS Geelani had delivered his speech in favour of Pakistan and accused Masarat Alam created a new slogan as given below:-

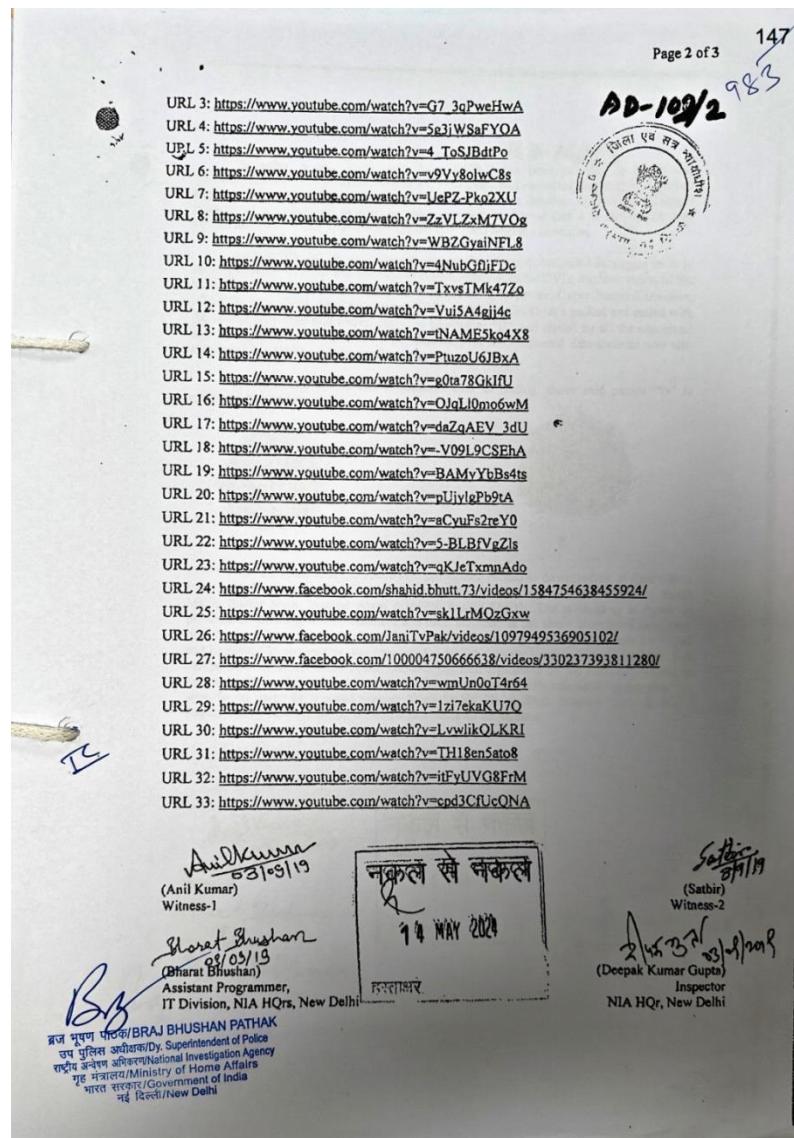
“Meri Jaan, Teri Jaan, Pakistan-Pakistan, Geelani Sahab ka kya paigam-Kashmir banega
Pakistan, Hafiz Saeed ka kya paigam Kashmir banega Pakistan, Jeevay jeevay Pakistan.”

121. After this rally, accused Masarat Alam instigated the mob to throw stones on the security forces and the vehicles plying on the road. The paralyzing impact of the violent agitations made by the secessionist elements on the

lives of common masses can be assessed by the happenings of 2008, 2009 and 2010 when the entire valley was held hostage to the secessionist ideology of these leaders and other like-minded people.

122. Further it is stated that the videos downloaded from the open source revealed that Masarat Alam was constantly trying to create 2010-style confrontations between the youth and the security forces at the instance of Pakistani agencies. Copies of the Recovery Memo (Ex. PW7/3) dated 03.09.2019, vide which the Videos of Masarat Alam were down loaded fromseveral URLs, is reproduced herewith:-





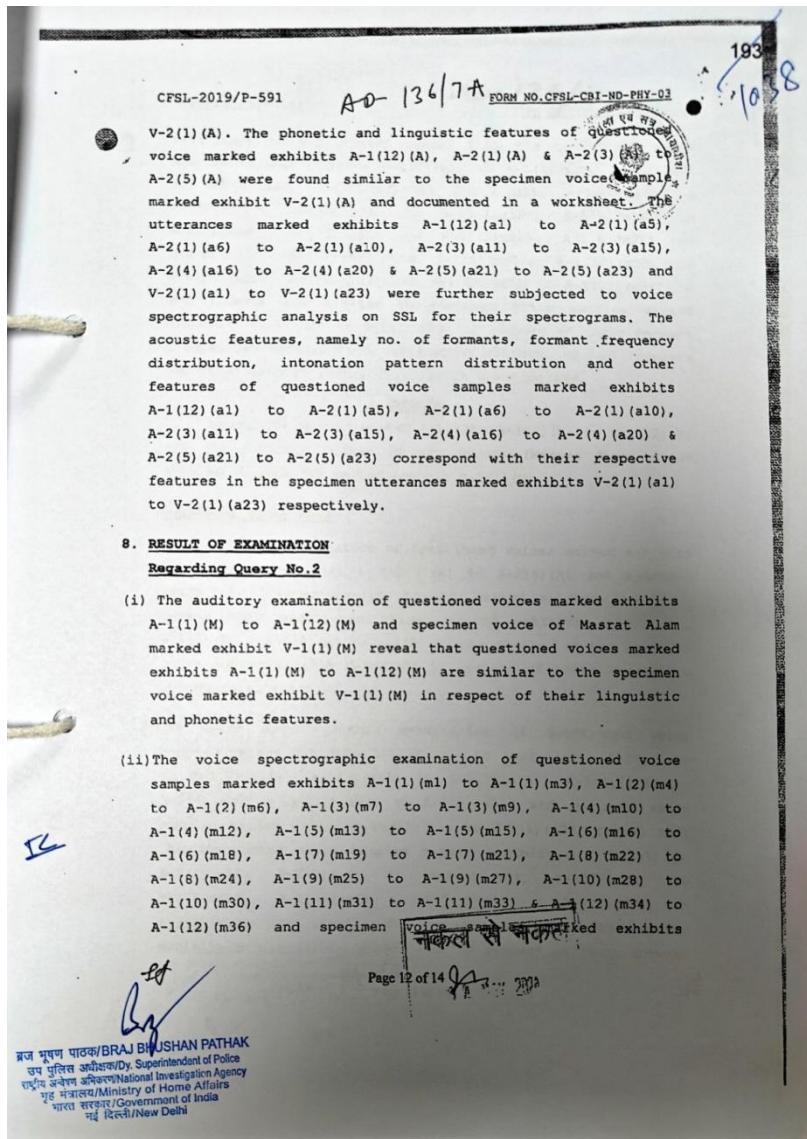
123. The affidavit further states about the transcripts of some of the videos of Masarat Alam as under:-

- *Sabse pahle mai aap sabko Mubarabadi pesh kar raha hu ki aapne Bharat ki gulami ke khilaf jo majamt suru ki hai usme siddat paida hui hai, par aapne apni mali or apni Jani kurbani pesh karke Bharat ke avamo me jaljala paida kiya hai. Aapko malum hai 65 saal se ye kom gulami ki ek tavar zindgi gujar rahi hai.*
- *Nara Jo aapne lagaya hai hum sable milke quit Jammu Kashmir, Bharat riyasi Jammu Kashmir se bedakh hal ho jaye, wapis chala Jaye apni foz ko lejaye, kyu ki wo ek yaha kasib ek kasib ki hasiuat rakhta hai.*
- *Sabse badi tarsi is chiz ki hai ki riyaste Jammu Kashmir Bharat ki gulami se Azad ho jaye, isliye aap sab ne aaj takisit kamat ka mujahira kiyaise Jari or sari rakhe, hum aap ko yakin ke sath kahna chahenge ki allah ki nusrat humare sath hai-aapkima Jamat ka Jo okuwathai use Bharat jald se jald yaha se wapsi ka faisla lene par majboor ho jayega.*
- *Jive Jive Pakistan, teri jan meri jaan Pakistan-Pakistan, Hafiz Saeed ka kya paigam Kashmir ko le jao Pakistan, Tera mera kya arman Pakistan-Pakistan.*

(English transliteration)

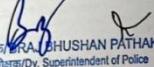
124. The affidavit further states that the voice specimen of Masarat Alam was obtained and forwarded to CFSL, New Delhi for matching the questioned voice as available in the aforesaid videos and the report from CFSL had confirmed the voice in the videos to be of Masarat Alam. Memorandum for obtaining voice sample dated 10.06.2019 (Ex.PW7/4) is also annexed with the affidavit and Report of CFSL, New Delhi (Ex.PW7/5) dated 29.08.2019 (forwarded with the forwarding letter dated 03.09.2019) has also been attached with the affidavit, which is from pages

181 to 195 of the evidence affidavit filed by PW-7. The results and opinions (from pages 193 & 194) of the CFSL Report are relevant for the purposes of the present proceedings and the images of the same are incorporated hereunder:-



194
1039

CFSL-2019/P-591	AD-136/2	FORM NO. CFSL-CBI-ND-PHY-03
<p>V-1(1) (m1) to V-1(1) (m36) reveal that the questioned voice samples marked exhibits A-1(1)(m1) to A-1(1)(m3), A-1(2)(m4) to A-1(2)(m6), A-1(3)(m7) to A-1(3)(m9), A-1(4)(m10) to A-1(4)(m12), A-1(5)(m13) to A-1(5)(m15), A-1(6)(m16) to A-1(6)(m18), A-1(7)(m19) to A-1(7)(m21), A-1(8)(m22) to A-1(8)(m24), A-1(9)(m25) to A-1(9)(m27), A-1(10)(m28) to A-1(10)(m30), A-1(11)(m31) to A-1(11)(m33) & A-1(12)(m34) to A-1(12)(m36) are similar to specimen voice samples marked exhibits V-1(1)(m1) to V-1(1)(m36) in respect of their formant frequencies distribution, intonation pattern, no. of formants and other general visual features in spectrograms.</p>		
OPINION		
<p>Hence, the voices marked exhibits A-1(1)(M) to A-1(12)(M) are the probable voices of the person (Masarat Alam) whose specimen voices are marked exhibit V-1(1)(M).</p>		
Regarding Query No. 4		
<p>(i) The auditory examination of questioned voices marked exhibits A-1(12)(A), A-2(1)(A) & A-2(3)(A) to A-2(5)(A) and specimen voice of Syedah Asiya Andrabi marked exhibit V-2(1)(A) reveal that questioned voices marked exhibits A-1(12)(A), A-2(1)(A), & A-2(3)(A) to A-2(5)(A) are similar to the specimen voice marked exhibit V-2(1)(A) in respect of their linguistic and phonetic features.</p>		
<p>(ii) The voice spectrographic examination of questioned voice samples marked exhibits A-1(12)(a1) to A-2(1)(a5), A-2(1)(a6) to A-2(1)(a10), A-2(3)(a11) to A-2(3)(a15), A-2(4)(a16) to A-2(4)(a20) & A-2(5)(a21) to A-2(5)(a23) and specimen voice samples marked exhibits V-2(1)(a1) to V-2(1)(a23) reveal that the questioned voice samples marked exhibits A-1(12)(a1) to A-2(1)(a5), A-2(1)(a6) to A-2(1)(a10), A-2(3)(a11) to A-2(3)(a15), A-2(4)(a16) to A-2(4)(a20) & A-2(5)(a21) to A-2(5)(a23) are similar to specimen voice samples marked exhibits V-2(1)(a1) to V-2(1)(a23) in respect of their formant frequencies distribution, intonation pattern, no. of formants and other general visual features in spectrograms.</p>		
Page 13 of 14		


 राज्य मूल्य पाठक R.A. BHUSHAN PATHAK
 उच्च पुलिस अधिकारी/Dy. Superintendent of Police
 राष्ट्रीय सुरक्षा अधिकारी/National Investigation Agency
 मूल्य भंडालक/Ministry of Home Affairs
 भारत सरकार/Government of India
 नई दिल्ली/New Delhi

125. It has been further stated in the affidavit that in continuation of the deep-rooted conspiracy, actions of Masarat Alam had grave implications for the security of State and that more than 40 cases had been registered against him in Jammu & Kashmir for his involvement in the unlawful activities and for such other actions which are prejudicial to the maintenance of peace and harmony in the society. Further, it is stated that during the search conducted in the house of Masarat Alam on 26.02.2019, incriminating material, including documents and electronic articles were recovered and seized from his house. During investigation, statements of witnesses were recorded under Sections 161 and 164 of Cr.P.C., which corroborate the charges of getting support from Pakistan based agencies and terrorist organizations, criminal conspiracy, instigating local public to resort to violence and to create a surcharged atmosphere conducive for propagation of secessionist agenda, repeatedly observing strikes on various imagined issues, inciting and instigating people to be involved in unlawful activities such as stone-pelting, attack on security forces, damaging public property, including burning of schools, arson, bank looting, organizing bandhs, forcible closure of roads and government establishments, etc.

126. Further it has been stated in the affidavit that the investigation revealed that Masarat Alam had received funds from Pakistan through some hawala conduit on 08.03.2015. To support this allegation, a document seized from

the house of Ghulam Mohammad Bhat, the accountant-cum-cashier of co-accused Zahoor Ahmad Shah Watali, has also been produced which is marked as Ex.PW7/9 and is incorporated hereinbelow:-

ANNEXURE P-9		
Foreign Contributions and expenditures 2015/2016		
2015		
3.3.2015	2,50,000 AED	Mudassir Wani
8.3.2015	10,00,000	
7.4.2015	15,00,000 Rs	<i>exp 107/9</i> <i>reimb.</i>
29.4.2015	10,00,000 Rs	Yasin Malik
3.5.2015	3,00,000 AED	Tariq Shafi (From Hafeez Saeed)
6.7.2015	5,00,000 Rs	Haj exp
20.7.2015	25,00,000 Rs	Geelani Sb
30.8.2015	10,00,000 Rs	Personal (Dubai visit)*
13.9.2015	15,00,000 Rs	Altaf Fantoosh (Geelani Sb)
21.11.2015	5,00,000 Rs	Shagufta
2016		
15.3.2016	30,00,000 Rs	HCP
10.4.2016	10,00,000 Rs	personal
17.6.2016	12,00,000 Rs	Advocate Shafi Rishi
16.6.2016	15,00,000 Rs	Naseem Geelani
20.10.2016	40,00,000 Rs	Iqbal Cheema HCP
21.11.2016	20,00,000 Rs	Geelani Sb
<i>Original document is attached with CCR (B) New Delhi Letter no 395 dttd. 16.11.2017 (D-154) 18 MAY 2018</i>		
<i>by</i> <i>राज मुराद यादव/BRM BHUSHAN PATHAK</i> <i>यह भूलिक अधिकारी/Superintendent of Police</i> <i>दक्षिण दिल्ली नेशनल इंवेस्टिगेशन एजेंसी</i> <i>दक्षिण दिल्ली/Ministry of Home Affairs</i> <i>भारत सरकार/Government of India</i> <i>दिल्ली/New Delhi</i>		

127. The affidavit further states that Masarat Alam being the General Secretary of Muslim League was arrested on 04.06.2019 being part of a conspiracy related to secessionist and terrorist activities in the State of Jammu & Kashmir. Various videos retrieved from the digital devices seized from his house, including a video "The Bleeding Paradise" established his anti-India and pro-terrorist attitude and based on the evidence on record, 2nd Supplementary chargesheet (Ex.PW7/11) dated 04.10.2019 was filed against five accused persons, namely, (i) Mohd. Yasin Malik, head of JKLF, (ii) Shabir Ahmad Shah, head of JKDFP, (iii) **Masarat Alam Bhat, Secretary of Muslim League**, (iv) Syeda Aasiya Andrabi, head of Dukhtaran-e-Millat (DeM) and (v) Abdul Rashid Sheikh, Chairman of Awami Ittehad Party u/s 120-B, 121, 121A & 124-A IPC and Sections 13, 16, 17, 18, 20, 38 & 39 of UA(P) Act. The charges have been framed against Masarat Alam u/s 120-B, 121, 121-A, 124A IPC, U/s 13 UAPA r/w Section 120-B IPC, Section 15 of UAPA r/w 120-B IPC and Sections 17, 18, 20, 38 & 39 of UAPA on 16.03.2022.

128. It is further stated in the affidavit that accused Yasin Malik, head of JKLF had pleaded guilty following which he was convicted of all the charges and has been sentenced for life and a fine of Rs.10 lakhs and the copy of order dated 25.05.2024 has been annexed as (Ex. PW7/13).

129. The witness has lastly deposed that from the cogent and irrefutable evidence, which has emerged till now manifests that General Secretary of MLJK-MA, namely, Masarat Alam @ Masarat Alam Bhat has been actively and continuously encouraging a veiled armed insurgency and is openly advocating and inciting people to bring about a secession of a part of the territory of India from the Union and that the activities of MLJK-MA are aimed at causing disaffection, disloyalty and disharmony by promoting feelings of enmity and hatred against the lawful government and the members of MLJK-MA are indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of the Union of India.

130. Ms. Warisha Farasat, learned counsel for the association cross examined PW-7 on 15.05.2024. The same is reproduced hereunder:-

"Q. I put it to you that the entire NIA Case No. RC 10/2017/NIC/DLI and the charge-sheet filed pursuant thereto is directed against the All Party Hurriyat Conference (APHC) and has nothing to do with the proscribed association (MLJK)?"

A. It is incorrect. (Vol.) In 1998, Masarat Alam had joined APHC (Geelani Faction). Prior to that, his association, i.e., MLJK was functioning independently and he was the General Secretary of the said association. However, with effect from 1998, he became part of the APHC."

PW-8

131. **Shri Mayank Arora (PW-8)** tendered his affidavit as **Ex.PW-8/A**; he stated that he is posted as Assistant Director in Enforcement Directorate, Delhi Zonal Office-II, New Delhi. He deposed about ECIR No.03/DLZO-II/2017 dated 14.06.2017 which was registered pursuant to the information received from the NIA/MHA about case FIR No. RC-10/2017/NIA/DLI dated 30.05.2017 U/s 120B, 121 & 121A of IPC r/w Sections 13, 16, 17, 18, 20, 38, 39 and 40 of UAPA registered by the NIA.

132. The witness deposed that the pre-condition for investigating the offence of Money Laundering by the Directorate of Enforcement is either that there should be an FIR or Police report under Section 173 of Cr.P.C. or a complaint in respect of a scheduled offence under the Prevention of Money Laundering Act, 2002 (PMLA). Since the sections 120-B, 121, 121A and 124A of IPC and Sections 13, 16, 17, 18, 20, 38, 39 and 40 of the Unlawful Activities (Prevention) Act, 1967 are scheduled offences under Part A, Paragraph 1 of PMLA, enquiries were initiated against the accused persons after recording brief facts of the scheduled offences in the ECIR No.03/DLZO-II/2017 dated 14.06.2017. Investigation conducted by the Directorate under the PMLA revealed that Masarat Alam S/o Abdul Mazeed Bhat Alam, resident of Zaindar Mohalla, Bada-Kadal, Srinagar, while acting as Chairman MLJK-MA alongwith other accused persons, spread separatist/militant movement in the Jammu & Kashmir being one of its architects and he was duly supported in his cause by Pakistani agencies through the Hurriyat representatives based in Pakistan such as Accused Zahoor Ahmed Shah Watali, who was continuously in touch with these Pakistan based entities and had received money through Hawala from these persons to act as the financial conduit in the network of the larger conspiracy.

133. It is further stated that during course of investigation, NIA conducted a raid on the house of Ghulam Mohammad Bhat (accountant-cum-cashier of Accused Zahoor Ahmad Shah Watali) on 16.08.2017 and a document was seized reflecting therein that Masarat Alam had received an amount of Rs.10,00,000/- (Rupees ten lakhs) on 08.03.2015 from Zahoor Ahmad Shah Watali. This document is part of main chargesheet filed by the NIA bearing No.01 of 2018 dated 18.01.2018 numbered as RUD D-132(a)/23. This document is stated to have established the fact that Zahoor Ahmad Shah Watali was receiving money from Hafiz Saeed (Head of Jamaat-ud-Dawa), from the ISI.

Zahoor Ahmed Shah Watali was remitting this money to Hurriyat leaders, separatists and stone-pelters of Jammu and Kashmir, including Masarat Alam. He is accused No.10 in ED Complaint U/s 44 & 45 dated 22.01.2019. Though he denied receiving Rs.10,00,000/- from Zahoor Ahmed Shah Watali, yet on cross-examination, he could not discharge the burden of proof under Section 24 of PMLA with regard to the incriminating documents, which showed foreign contributions received from Hafiz Saeed, the Pakistan High Commission and another source from Dubai. All this is stated to be amounting to proceeds of crime as defined in Section 2(1)(u) of PMLA as the same was derived from criminal activity relating to a scheduled offence with the purpose of distribution among those for stone-pelting on the security forces and to promote lawlessness and violence in Jammu & Kashmir with the larger intention to secure secession of Jammu & Kashmir from the Union of India.

134. He further stated that during investigation he had come across various incidents, reports, FIRs and cases which show that MLJK, its chairman Masarat Alam and other leaders of the said organization were indulged in anti-national activities and were working for cession of the State of Jammu and Kashmir from the Union of India and the cession of the Constitution of India. He further stated that the ban on the organization is appropriate and needs to be upheld in national interest as well as in the interest of the general public of the UT of Jammu and Kashmir.

135. Ms. Warisha Farasat, learned counsel for the association cross examined PW-8 on 16.05.2024. The same is reproduced hereunder:-

“(Attention of the witness is drawn to Annexure ‘B’ at page 64 forming part of Ex. PW/8A)

Q. Is this the list of witnesses that you have filed alongwith your affidavit?

A. Yes.

Q. Have you annexed the statement of the accused recorded under Section 50 of the PMLA alongwith your affidavit?

A. No. It is not a part of my affidavit. However, it is a part of the complaint filed as Annexure ‘A3’ alongwith my affidavit (marked as Ex.PW8/3). The annexures to the said complaint have not been filed by me alongwith my affidavit.”

PW-9

136. **Shri Sandeep Bhat (PW-9)** tendered his affidavit as **Ex.PW-9/A**; he stated that he is presently posted as Superintendent of Police, Bandipora, Srinagar, Kashmir and is the supervisory officer in respect of the case FIR Nos.26/2014, 17/2014, 23/2015 and 53/2015. He deposed as under:

- 1) FIR No.26/2014 dated 19.03.2014 was registered at PS Hajin U/s 13 of UA(P) Act on the basis of an information received through reliable sources to the effect that at Parry Mohalla, Hajin, some persons, namely, (1) Mustaq-ul-Islam, (2) Mohd. Yusuf Naqash, (3) Gh. Hassan Parry, (4) Ab. Hameed Gadayee, (5) Yaseen Attai, (6) Assadullah Parray, (7) Showkat Ahmad Hakeem, (8) Mehraj-udin Gojree, etc. affiliated with the Hurriyat Conference delivered instigating speech to the people against the sovereignty and integrity of the Nation and also provoked the people through different tactics to boycott elections and they also raised slogans in favour of Pakistan and against India. He further deposed that during investigation, statements of witnesses were recorded under Sections 161 and 164 of Cr.P.C., who corroborated the facts of the case. He deposed that after conducting the investigation, chargesheet (Ex.PW9/4) dated 02.12.2021 was filed in the concerned jurisdictional court and the trial is pending.
- 2) FIR No.17/2014 dated 07.03.2014 was registered at PS Hajin under Sections 13 of ULA(P), 132 of PR Act and 147/148 RPC on the basis of an information received through reliable source to the effect that at

Bazar Hajin after Friday prayers, (1) Shabir Ahmad Shah, (2) Mushtaq-ul-Islam, (3) Nayeem Ahmad Khan, (4) Bashir Ahmad Dar, (5) Mohd. Yousuf Naqash; and (6) Mohd. Yaseen Attai, affiliated with separatist group JKHC had appeared in Main Chowk Hajin and suppressed people not to participate in any kind of election process and if they did so, they would face dire consequences and raised slogans in favour of Pakistan, provoked the people against the integrity of the country. This procession was carried without obtaining any permission. The Model Code of Conduct was also in force in view of the Parliamentary elections in the Valley. During investigation, statements of witnesses under Section 161 and 164 of Cr.P.C. were recorded, who have corroborated the guilt of the accused persons. The chargesheet (Ex.PW9/8) dated 07.01.2022 stands filed in the jurisdictional court and the trial is pending.

- 3) FIR No.23/2015 dated 07.10.2015 was registered at PS Aragam under Sections 307, 34, 120-B RPC and Sections 7/27 of Arms Act on the basis of a written docket received from Dy. S.P. Bandipora for registration of the FIR to the effect that he, alongwith S.H.O. Police Station Bandipora, were on operational duty at Gund-Dachina, Bandipora. However, SDPO Sumbal, SIT Srinagar, accompanied by Altaf Ahmad number 3462/S were chasing the militants from Wular Vantage Park, who were boarded and travelling in two vehicles and were proceeding towards Bazar Bandipora while reaching at Gund-Dachina crossing, one Celerio unknown in which (1) Shaukat Ahmad Hajam @ Hakim son of Gh. Mohd, and (2) Mehrajuddin Seer Gojari @Nandda son of Gh. Kadir were boarded. The Celerio vehicle, one Tata Mobile 207 bearing registration No.JK05E/196 was also coming. The persons sitting in the celerio decreased the speed of vehicle and shouted loudly to the militants travelling in Tata Mobile 207 saying that Qasim Bhai, Quasim Bhai “this is a policy party, kill them”, upon which the militants started firing with arms and ammunition on the police party with the criminal conspiracy to kill them. In this incident, S.I. Altaf Ahmad No.3462/S was critically injured. The police party also retaliated the fires, as a result of which the militants fled away from the spot. The FIR was registered, investigation was completed, statement of witnesses were recorded under Sections 161 and 164 of Cr.P.C. who have corroborated the incident. The Chargesheet (Ex.PW9/13) dated 14.03.2016 stands filed in the jurisdictional court and the trial is pending.
- 4) FIR No.53/2015 dated 28.03.2015 was registered at PS Sumbal U/s 13 of ULA(P) Act on the basis of an information received through reliable sources to the effect that Hurriyat Activist Masarat Alam Bhatt, Assadullah Parry, Showkat Hakeem, Mehraj-ud-din Gojri, Sajad Ahmad Navoo, Nisar Ahmad Vani, Mohd. Rafeeq reached to the home of Late Mudasir Ahmad Lone, who was killed in the year 2010 and delivered speech against India and in favour of Pakistan. After registration of FIR investigation was completed, statements of witnesses were recorded under Sections 161 and 164 of Cr.P.C., who have corroborated the incident. The Chargesheet (Ex.PW9/16) dated 30.08.2021 was filed in the jurisdictional court against the accused persons Mehraj-Ud-Din Gojri and Showkat Ahmad Hakeem (both of them were in jail at the time of filing of chargesheet) and also against the accused Masara Alam Bhat, Mohammad Assadullah Parry, Sajad Ahamad Navoo, Nisar Ahmad Wani (these were on bail at the time of filing of the chargesheet).
- 5) He has relied upon the certified true copies of the FIR Nos.26/2014, 17/2014, 23/2015 and 53/2015 alongwith their true English Translation and the charge-sheets filed pursuant to the above FIRs, copies of the statements of witnesses recorded under Section 161 and 164 of Cr.P.C. alongwith their true English Translation, which have been exhibited as Ex. PW-9/1 to PW-9/15A in the present proceedings.

137. Ms. Warisha Farasat, learned counsel for the association cross examined PW-9 on 08.05.2024. The same is reproduced hereunder:-

"I joined the police force in April 2011. I did not investigate any of the FIRs, referred to in my affidavit.

None of the statements recorded under Sections 161/164 Cr.P.C. in the said FIRs were recorded before me or in my presence.

Q. I put it to you that you are not competent to depose on behalf of the witnesses' statements that have been recorded under Section 161 or Section 164 Cr.P.C. and in respect of the seizure memos because you cannot testify the veracity of these specific factual allegations made by other witnesses who are themselves not in the witness box?

A. I cannot say. (Vol.) I have been appointed as the Supervisory Officer in respect of these FIRs and I have perused the official record.

Suggestion: I suggest it to you that Shaukat Ahmad Hakim and Mehraj-ud-din Gojri are not members of the association.

A. It is incorrect to suggest that Shaukat Ahmad Hakim and Mehraj-ud-din Gojri are not the members of the proscribed association.

Q. I put it to you that you cannot testify about the factum of their membership as statement under Section 161 Cr.P.C. is not recorded by you?

A. It is incorrect to suggest. (Vol.) In the statement under Section 164 Cr.P.C. of Dy. S.P Mir Murtaza, it has been clearly mentioned Shaukat Ahmad Hakim and Mehraj-ud-din Gojri are members of the proscribed association and "over-ground workers", providing logistic support to the terrorists.

(Attention of the witness is drawn to the first paragraph of the charge-sheet, filed as Ex. PW 9/16A), Page 90 of the affidavit, dated 13.08.2021)

Q. Does the charge-sheet refer to the specific contents of the speech with regard to which these FIRs were registered?

Ans. Yes, there is a reference to the nature of the speech but the contents are not there. The exact wordings of the speech are not part of the charge-sheet filed along with my affidavit. However, it has been brought out that pro-Pakistan speeches were made.

Suggestion: I suggest to you that none of the accused persons in FIR No.26/2014 dated 19.03.2024 are members of the proscribed association.

Ans. It is incorrect to suggest that they are not members of the proscribed association.

It is incorrect to state that none of the persons referred to in the statement under Section 164A Cr.P.C. of Constable Abdul Majid (Ex.PW 9/7) are members of the proscribed association."

PW-10

138. **Shri Saqib Ghani (PW-10)** tendered his affidavit as **Ex.PW-10/A**; he stated that he is posted as Deputy Superintendent of Police at Budgam Headquarters, Kashmir. He deposed that he is the supervisory officer in respect of FIR No.92/2015 dated 15.04.2015 registered at PS Budgam under Sections 147/341/336/427/120-B and 121 RPC and U/s 13 of ULA(P) Act on the basis of an specific information received at the police Station Budgam that SAS Geelani was returning from Delhi to Humhama Airport. The said activist was in Delhi for a long duration and

Hurriyat (G) alongwith the Muslim League invited their supporters to welcome SAS Geelani and when SAS Geelani reached the airport, around three thousand supporters led by SAS Geelani, Masarat Alam Bhat, Bashir Ahmad Bhat @ Peer Saifullah, Mehraj-ud-din Kalwal, Mohammad Akbar Bhat @ Ayaz Akbar, Imtiyaz Hyder reached IG Road in the form of an unlawful assembly and raised slogans against the Government of India, including the present State Government and administration. The gathering blocked the IG Road and pelted stones on C.R.P.F. vehicles causing damage. Some members of the said assembly led by Javid Ahmad Najar and Zahoor Ahmad Kana raised the Pakistani flag at the said gathering. Thus, the FIR was registered and investigation carried out, incriminating material, i.e., Pakistani flag and provocative anti-national speeches were seized, statements of witnesses were recorded under Section 161 Cr.P.C. and chargesheet (Ex.PW10/2) dated 02.08.2023 was filed in the jurisdictional court and the trial is still pending.

139. He relied upon the certified true copies of the FIR No.92/2015 [alongwith its true English Translation (Ex.PW10/1 to PW10/1A)] and the charge-sheet alongwith its English Translation (Ex.PW10/2 to PW10/2A), copies of the statements of witnesses recorded under Section 161 alongwith their true English Translation (Ex.PW10/3 & 10/5 to PW10/3A and PW10/5A) and Seizure Memo (Ex.PW10/6 and PW10/6A) in the present proceedings.

140. Ms. Warisha Farasat, learned counsel for the association cross examined PW-10 on 08.05.2024. The same is reproduced hereunder:-

“ I joined the Police Force in the year 2015. I was not the I.O. in respect of FIR No. 92/2015. I further state that none of the statements of the witnesses under Section 161 Cr.P.C were recorded in my presence.

Q. I put it to you that you are not competent to depose on behalf of the witnesses statements that have been recorded under Section 161 and 164 Cr.P.C and in respect of the seizure memo attached herein because you cannot testify to the veracity of the specific factual allegation made by other witnesses?

I cannot say. (Vol.) Since I am the Supervisory Officer in respect of FIR No. 92/2015, I am in a way competent to depose with regard to the said FIR No. 92/2015 being officially aware of the contents thereof and the investigation conducted.

Q. Are any slogans mentioned in the FIR No. 92/2015?

A. I have to peruse the record to see what were the exact slogans which are referred to in para 6 of my affidavit. There is no reference to the same in my affidavit or the enclosures thereto. (Vol.) The same are the part of the chargesheet.

The chargesheet enclosed by me alongwith the affidavit (Ex.PW10/2 to PW10/2A) does not make any specific reference to any slogan. However, the chargesheet mentions that there was an unlawful assembly and slogans were raised against the Government of India and the State Government and the administration.

Q. What is the full form of “I.G. Road”?

Ans. “I.G. Road” referred to in FIR No. 92/2015 and also referred to in para 6 of my affidavit means “Indira Gandhi Road”. This road begins from outside the Srinagar Airport till Srinagar City.

Q. Is “I.G. Road” referred to by any other name, today or either at that time?

Ans. I am not aware whether “I.G. Road” is referred to by any other name.

Q. Have you put any photographs evidencing the presence of 3000 people in the procession?

Ans. I have not filed any photograph alongwith my affidavit to demonstrate that there were 3000 supporters gathered near "I.G. Road" as referred to in para 6 of my affidavit. (Vol.) The relevant photographs are part of the seizure memo and were submitted to the concerned NIA Court, Badgam alongwith the chargesheet.

I cannot say whether Jayid Ahmad Najar and Zahoor Ahmad Kana are members of Muslim League Jammu Kashmir (Masarat Alam Faction) MLJK-MA or not. (Vol.) They are part of APHC.

Pursuant to filing of chargesheet in the aforesaid FIR No. 92/2015, charges are yet to be framed."

PW-11

141. **Sarfaraz Basir (PW-11)** tendered his affidavit as **Ex.PW-11/A**; he stated that he is posted as Sub-Divisional Police Officer, Sopore, Kashmir and is the Supervisory Officer in respect of the FIR Nos.68/2015 and 69/2020. He deposed as under:-

- 1) FIR No.68/2015 dated 17.04.2015 was registered at PS Sopore under Sections 504, 153-A of RPC on the basis of an information received at the police station on 13.04.2015 that one Masarat Alam Bhat visited the house of (i) Mohd Ramzan Shalla (ii) Mohd. Ismail Dar and (iii) Athar Ahmad Dar in Sopore, wherein Masarat Alam Bhat delivered provocative speech to a large gathering to the people of Sopore area thereby inciting them to force other people of adjoining areas to participate in unlawful protests. Through his speech, Masarat Alam created disharmony and promoted hatred and ill will among the general public and he also provoked the youth of the area to join militant ranks. The intention of Masarat Alam Bhat was to create antagonism among the general public and disrupt the peace and tranquility of the area. It was informed that Masarat Alam had also visited Sopore earlier on 04.04.2015 when also he did acts for creating disharmony and disrupted peace of the area. Consequently, the FIR was registered, investigation started, statements of witnesses were recorded under Section 161, Cr.P.C., who have corroborated the incidents. However due to the adverse situation created in the valley, chargesheet got delayed, though the investigation has progressed substantially now and the chargesheet is also likely to be filed soon.
- 2) FIR No.69/2020 dated 08.04.2020 was registered at PS Sopore under Sections 147, 148, 149, 336 IPC on the basis of a written complaint received from HC Ali Mohammad at the police station that on 08.04.2020 at 1715 hrs, he alongwith other nafri of police station Sopore and CRPF 177 Bn, 178 Bn and 98 Bn G-coy were performing operational duty at Gulabdar Arampora Sopore, where one terrorist of LeT outfit, namely, Sajad Nawab Dar S/o Mohd Nawab Dar R/o Saidpora Sopore was eliminated and after culmination of the operation, a violent mob in the shape of unlawful assembly came from different streets of the area and started pelting stones upon the deployed nafri of police and security forces and the violent mob started rioting and endangered the life and personal safety of others. When the unlawful assembly was ordered to get dispersed, they did not pay any heed to the said orders and continued with stone pelting and the nafri of G-coy CRPF had to fire tear gas shells for self-defence and to disperse the mob. However, no loss of life occurred. It was also written in the complaint that the violent assembly was armed with deadly weapons and was headed by General Secretary of MLJK, i.e., Farooq Ahmad Bhat @ Farooq Tawheed and Rayees Feroz Mir and other members of the mob could not be identified as they had masked their faces. Resultantly, the FIR was registered, investigation conducted and statements of witnesses under Section 161 Cr.P.C. was recorded, who have corroborated the contents of the complaint and the chargesheet has been filed in the jurisdictional court in which trial is pending.

- 3) He has relied upon the certified true copies of the FIR Nos.68/2015 and 69/2015 alongwith their true English Translations and the charge-sheet/Final Investigation Report filed pursuant to the above FIRs, copies of the statements of witnesses recorded under Section 161 alongwith their true English Translations, which have been exhibited as Ex. PW-11/1 to PW-11/7A in the present proceedings.
142. Ms. Warisha Farasat, learned counsel for the association cross examined PW-11 on 09.05.2024. The same is reproduced hereunder:-

“Q. I put it to you that no such incident could have happened and the people could not have come out to pelt stones as Covid-19 Lockdown was announced by the Government on 24.03.2020?

A. *It is incorrect.*

Q. Can you point out the specific contents of the speech referred to in the FIR No.68/2015 appended as Ex. PW-11/1 with your affidavit?

A. *I state that the FIR No.68/2015 refers to the nature of the speech delivered by the accused persons but does not refer to the exact contents thereof. (Vol.) In the speech, the people of Sopore were asked to protest in the adjoining areas.*

Q. Have you enclosed any video of the speech along with your affidavit?

A. *I have not enclosed any video of the speech along with my affidavit.*

Q: I put it to you that you have no personal knowledge of the incidents as mentioned in FIR No.07/2010 and you are not competent to depose with regard to the contents thereof?

A. *It is incorrect. (Vol.) I am the Supervisory Officer and I have perused the records.*

Q: I put it to you that you cannot testify about the veracity of the specific factual allegations mentioned in the charge-sheet or in the Statement recorded under Section 161, Cr.P.C as you are not the maker of the statement.

A. *It is incorrect.”*

PW-12

143. **Shri Hari Prasad KK (PW-12)** tendered his affidavit as **Ex.PW-12/A**; he stated that he is posted as Sub-Divisional Police Officer, Kothibagh, Srinagar, Kashmir and is the Supervisory Officer of and has gone through the records of the case files of FIR Nos.07/2010, 52/2010, 12/2006. He deposed as under:-

- 1) FIR No.07/2010 under Sections 13 of ULA(P) and 121A, 506 RPC was registered at P.S. Maisuma on the basis of a written complaint from SI Mohammad Assadullah that he, alongwith other CIK officials, was on regular duty in the premises of Saddar Court when accused Masarat Alam was produced by SHO Police Station Nigeen before the Court for remand purposes. However, he was released by the court and while coming out from the court, he threatened the SHO of Police Station Nigeen of dire consequences and also used provocative language against the sovereignty and security of the State as well as of the Union of India. Resultantly, the FIR was registered and investigation was started. Masarat Alam was arrested in the instant case on 18.11.2010. However, later on his custody was changed in another FIR. The statements of the witnesses under Sections 161 and 164 Cr.P.C. were recorded, who corroborated the above incident. The chargesheet was also filed in the jurisdictional court.

- 2) FIR No.12/2006 under Section 148, 307, 188, 332, 353, 427 of the Ranbir Penal Code was registered at P.S. Kralkhud in respect of an incident which took place on 05.05.2006. On this date, there was a strike call in Srinagar City against Janeen's Sex Scandal due to which all the business establishments were closed. Meanwhile, a violent mob under the command of Masarat Alam Bhat S/o Abdul Majeet Bhat, alongwith 30 others came out who were raising anti-national slogans and were proceeding towards chainkral Mohalla Habbakadal. Attempts were being made to stop the violent mob and to disperse it. However, the violent mob came out of control and attacked on police who were on duty at that time and SP East and SDPO Kothibagh alongwith Escorts were made hostage by the violent mob and pelted stones with the intention of killing the police personnel. He further stated that due to stone pelting many police personnel, including SI Dilraj Singh and CT Khursheed Ahmad, Mohd Ahsan 1445, Shabir Ahmad 4519, Mehrajuddin 4104/s, Nazir Ahmad 812/S, Manzor Ahmad 3865/S, Zubair Ahmad 3471/S, Mohammad Ramzan 3486/S, Anil Kumar 729/S, Shabir Ahmad 456/S, Riyaz Ahmad 1466/S, Rafeeq Ahmad 902/S, Ashfaq Hussain, 1944/S, Mohd Akram 381/S, Ashfaq Hussain 2944/S, Nazir Ahmad 455/CID, etc. got injured. Government vehicles of SP East, SDPO Kothibagh, SHO Kothibagh and PS Vehicles were damaged. He deposed that after registration of the FIR, investigation was conducted, statements of the witnesses under Section 161 Cr.P.C. were recorded, who corroborated the above incident. The charge-sheet (Ex.PW-12/10) dated 03.12.2006 has been filed in the jurisdictional court which is pending adjudication before the trial court.
- 3) FIR No. 52/2010 under Sections 124-A & 506 of the Ranbir Penal Code and under Section 13 of ULA(P) Act was registered on 27.07.2010 at P.S. Kothibagh in respect of an incident where Masarat Alam Bhat had published an Article in the newspaper "Greater Kashmir" wherein he made a "Quit Jammu and Kashmir" appeal to all soldiers of the Indian Armed Forces saying "We appeal to you on behalf of our people to quit Jammu and Kashmir, to not participate and subjugation of Indian occupation and to lend solidarity to the people of Jammu and Kashmir for rightful self-determination and the right to Jammu Kashmir people to be free". He further stated in the Article that we appeal to you to participate in civil disobedience against the order of the Indian Armed Forces and the Government of India. Accordingly, FIR No.52/2010 was registered, investigation was conducted, statements of witnesses under Section 161, Cr.P.C. were recorded, who have corroborated the veracity of the incident and the Chargesheet (Ex. PW12/12) dated 25.01.2016 was filed in the concerned court and the trial is pending.
- 4) He relied upon the certified true copies of the FIR Nos.7/2010, 52/2010 and 12/2006 [alongwith their true English Translation] and the charge-sheets filed in the above FIRs alongwith their English Translation, copies of the statements of witnesses recorded under Section 161 alongwith their true English Translation, Seizure Memo (Ex.PW12/1 to PW12/15A) in the present proceedings.
144. Ms. Warisha Farasat, learned counsel for the association cross examined PW-12 on 09.05.2024. The same is reproduced hereunder:

"Q. What is "Janeen's Sex Scandal"?

A. I do not know the details as to what was "Janeen's Sex Scandal" as referred to in paragraph 8 of my affidavit. (Vol.) There was a strike called on 05.05.2006 on account of the said "Janeen's Sex Scandal". During the said strike, all the shops and establishments were closed and there was a violent mob which was going from Police Station Kralkhud which is in my jurisdiction and were proceeding to a location called Chainkral Mohalla, Habbakadal. SP (East) Srinagar and SDPO Kthibagh were depulated at that point of time. But, the violent mob attacked them by pelting stones, damaged vehicles and injured the police officers.

I did not conduct any inquiry to find out as to what was the “Janeen’s Sex Scandal”.

Q. Have you attached any MLCs alongwith your affidavit?

A. I have not attached any MLCs alongwith my affidavit. (Vol.) It is part of the full record of the charge-sheet.”

PW-13

145. **Mohd. Nawaz Khandey(PW-13)** tendered his affidavit as **Ex.PW-13/A**; he stated that he is posted as Deputy Superintendent of Police Hqrs., Pulwama, Kashmir and is the Supervisory Officer in respect of FIR Nos.43/2010 and 46/2016. He deposed with regard to these FIRs as under:-

- 1) FIR No.43/2010 was registered on 29.01.2010 at Police Station Pulwama, Kashmir, under Sections 148/336, 427 and 153-A of the Ranbir Penal Code on the basis of a reliable information that one “Peoples Freedom League Group” affiliated worker, namely, Mohammad Rafiq Ganie R/o Achabal A/P Srinagar delivered inflammatory speech wherein he condemned the recent Shopian and Kalampora incidents and alleged the security forces to be responsible behind the incidents, besides instigating people against sovereignty and integrity of India and after Friday prayers, the said accused raised slogans “Freedom from India” led the procession from Jamia Masjid to Rajpora Chowk of Pulwama town where a violent mob pelted stones and caused damage to some vehicles. Accordingly, FIR No.43/2010 was registered, investigation was conducted, statements of witnesses under Section 161, Cr.P.C. were recorded, who have corroborated the veracity of the incident and the Chargesheet (Ex. PW13/3) dated 08.12.2023 was filed in the concerned court.
- 2) FIR No.46/2016 under Sections 307, 148, 149, 332 of RPC and Sections 7/27 of Arms Act was registered on 14.02.2016 at P.S. Pulwama on basis of a reliable information that after credible inputs about presence of militants in the Ahanger Mohalla Kakapora, SOG Awantipora, Mampore, Kakapora and 50 RR cordoned off the area and during search miscreants equipped with deadly weapons, pelted stones, bricks and petrol bombs upon the search party with the aim to give chances to the trapped militants to fled away from the spot resulting in some security forces getting injured and the search led to an encounter and the firing etc. Accordingly, FIR No.46/2016 was registered. During investigation, in cross firing, one terrorist, namely, Adil Ahmad Shergojri got killed and two civilians, namely, Asif Ahmad Mir and Shaista Hamid got injured, who later on succumbed to their injuries. Investigation also faced challenges due to the difficult situation caused by the separatists in the valley as people were scared to speak out against them. Later on, the statements of witnesses under Section 161, Cr.P.C. were recorded, who have corroborated the veracity of the incident and the Chargesheet (Ex. PW13/8) was filed in the concerned court.
- 3) He has relied upon the certified true copies/English translations of the FIR Nos. 43/2010 and 46/2016, charge-sheets filed in the said FIRs and copies of the statements of the witnesses recorded under Section 161 Cr.P.C., which have been exhibited as Ex. PW-13/1 to PW-13/7A in the present proceedings.

146. Ms. Warisha Farasat, learned counsel for the association cross examined PW-13 on 09.05.2024. The same is reproduced hereunder:-

“Q. Do you know the name of the association with regard to which you are deposing ?

A. I am deposing with regard to the ban on MLJK-MA.

The charge-sheet filed in FIR No.46/2016 does not specifically refer to the name of the said association. Even, the statement marked as Ex.PW-13/5A does not specifically refer to the name of the said association. The said statement does not even refer to any member of the said association. (Vol.) It refers to miscreants.

The statement marked as Ex. PW-13/6A, does not specifically disclose as to who shot the civilians referred to therein.”

PW-14

147. **Shri Sajad Ahmad Sheikh (PW-14)** tendered his affidavit as **Ex.PW-14/A**; he stated that he is posted as Superintendent of Police, Hqrs, Anantnag, Kashmir. He deposed that he is the Supervisory Officer in respect of FIR No.31/2018 dated 14.07.2018 which was registered U/s 16, 18 and 20 of ULAP Act at Police Station Uttersoo, Srinagar on the basis of an information received from reliable sources that at about 1610 hrs, one person Rafiq Ahmad Ganie, who is affiliated with Hurriyat Muslim League, etc. hatched a criminal conspiracy to promote the terrorism in the jurisdiction of PS Uttersoo and are influencing the general youth for indulging in terrorism and it was further disclosed in the information that Nisar Ahmad Bhat, a terrorist killed in an encounter by the forces on 03.07.2018, whose dead body was brought in the graveyard of his native village at Machil Sector of Kupwara during which the said accused separatist raised slogans against the Union of India and police and had also delivered a provocative speech and incited the young generation to join terrorist organizations and had also waved the Pakistani flag on this occasion in order to separate the State of Jammu and Kashmir from the Union of India. Consequently, FIR was registered. During investigation, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident. The chargesheet (Ex.PW14/7) dated 14.04.2023 has been filed in the jurisdictional court.

148. He has relied upon the certified true copies/English translations of the FIR No.31/2018, charge-sheet filed in the said FIR and copies of the statements of the witnesses recorded under Section 161 Cr.P.C., which have been exhibited as Ex. PW-14/1 to PW-14/6A in the present proceedings.

149. Ms. Warisha Farasat, learned counsel for the association cross examined PW-14 on 09.05.2024. The same is reproduced hereunder:-

“Q. Do the statements of the witnesses filed by you along with your affidavit specifically refer to the exact slogans that were raised which are referred to therein?

A. The statements of the witnesses filed by me along with my affidavit (Ex.PW-14/2A to PW-14/5A) do not specifically refer to the exact slogans that were raised and which are referred to therein. (Vol.) The slogans were provocative, anti-national and pro-Pakistan.

Q. I put it to you that your assertion that slogans were anti-national is purely based on your subjective opinion and are not borne out from the records.

A. It is incorrect.

Q. Have you filed any video recording of the incident mentioned in your affidavit?

A. No.

Q. Is it a common practice to attend funerals in Kashmir?

A. Yes, it is a common practice to attend funerals and religious rituals in Kashmir. I am a Kashmiri.

Tribunal Question: Was there anything wrong on the part of the accused persons in attending the funeral in question?

A. *In the funeral procession, pro-Pakistan and anti-India slogans were raised and youths were instigated to join the militant ranks to separate Kashmir from India.*

I know the nature of the slogans. However, I cannot reproduce the exact slogans. I was not present when the slogans were raised."

PW-15

150. **Shri Syed Yasir Qadri (PW-15)** tendered his affidavit as **Ex.PW-15/A**; he stated that he is posted as Additional Superintendent of Police, Baramulla, Kashmir and is the Supervisory Officer in respect of FIR Nos.69/1999, 215/2010, 137/2013, 258/2016 & 52/2017. He deposed with regard to these FIRs as under:-

- 1) FIR No.69/1999 dated 10.09.1999 under Sections 2 and 13 of UAP Act and 188/121 of the Ranbir Penal Code was registered at Police Station Uri for the incident that on 10.09.1999, Officer Incharge of PS Uri alongwith other personnel was returning from patrolling duty at Uri market, when it was disclosed through credible information that members of the Hurriyat Conference (G), including its leader SAS Geelani, alongwith other Hurriyat members, namely, Mohammad Ashraf Sehra, Masarat Alam Bhat S/o Abdul Hameed Bhat R/o Zandar Mohalla Srinagar, Abdul Ahad Waza, Mohammad Maqbool Sofi, Khazir Mohammad Ganaie, Azad Ahmad Bangroo, Siraj-U-din Ganai, Abdul Ahad Dantoo, Abdul Rasheed Shugun, Haji Ghulam Mohammad Sankar and Ghulam Ahmad Gulzar were present in the Uri Market where they addressed the general public and repeatedly instigated them to boycott elections and while addressing the general public, they also gave speeches to the effect that the State of Jammu and Kashmir is a temporary part of India and that the people of the State of Jammu & Kashmir are being suppressed by the undemocratic means and imperialist approach. It was further stated that the aforesaid members also provoked the youth of Uri area to take up arms and fully participate in the armed struggle. They also violated the order of the District Magistrate Baramulla issued under Section 144 Cr.P.C. Resultantly, FIR was registered, investigation conducted and all accused persons were arrested during investigation, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident. The chargesheet (Ex.PW15/2) has been filed in the jurisdictional court.
- 2) FIR No.215/2010 dated 17.09.2010 under Sections 307, 148, 149, 336, 427, 332 and 188 of the RPC was registered at Police Station Pattan to the effect that at around 1330 hrs, information was received at PP Mirgund from reliable source that a mob led by Bashir Ahmad Shah @ Sanjay alongwith Showkat Amad Shah @ Boya, Bilal Ahmad Tantray, Farooq Ahmad Bhat @ Daga, Nisar Ahmad Bhat, Javid Ahmad Bhat, Ab Rehman, etc., carrying lathies, stones and other sharp weapons were protesting at Singhpora and were marching towards Palhallan under the call of Hurriyat (G) (*Palhallan Chalo*). The said mob is stated to have violated the curfew already imposed by the Administration on the pretext of "*Palhallan Chalo*" protest and while marching towards Palhallan, the mob pelted stones at the deployed security forces with the intention to kill them and hence the security personnel were injured. Thereafter, the security forces had no choice but to use tear gas, lathi charge and warning shots in order to disperse the mob which left some protesters injured. Resultantly, FIR was registered, investigation conducted and all the 9 accused persons were arrested during investigation out of which 8 persons were granted bail by the court. The remaining accused person Masarat Alam Bhat was then lodged in District Jail Kathua under PSA. Statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident. The chargesheet (Ex.PW15/6) has been filed in the jurisdictional court.
- 3) FIR No.137/2013 dated 09.04.2013 under Sections 506, 120-B of RPC and Section 13 of ULAP Act was registered at Police Station Baramulla to the effect that some posters were found pasted in the town of

Baramulla which had provoking contents stating that the youth of Baramulla should agitate against the Army in order to force them to shift Army Camps from Baramulla and also against the police to stop the alleged harassment of the general public and that these posters were circulated with the sole intention of disrupting peace and order in the Baramulla area and the adjacent areas by the accused persons, namely, Sajad Ahmad Khan, Javid Ahmad Gojri, Ab. Qayoom Najar, Shala Dobi, Samir Sofi, Naseer Ahmad Najar, Asif Gul, Mudasir Ahmad Kirmani, Ilyas Ahmad Bhat, etc. under the command and direction of Masarat Alam Bhat. Resultantly, FIR was registered, investigation conducted, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident. The chargesheet (Ex.PW15/11) dated 19.02.2024 has been filed in the jurisdictional court.

- 4) FIR No.258/2016 dated 30.08.2016 under Section 13 of U LAP Act was registered at Police Station Baramulla to the effect that the Chairman of separatist organization Muslim League, namely, Masarat Alam Bhat S/o Abdul Majeed Bhat R/o Zaindar Mohalla, Srinagar, then lodged in sub-jail Baramulla was carrying out unlawful activities from inside the jail and that under the garb of meeting his associates, contacted and instigated the terrorists to spread terrorism in the district of Baramulla and that the accused took undue advantage of the unfavorable situation which arose due to the killing of Burhan Wani and further with the help of self-styled associates of his organization, he tried to provoke the youth to involve in terrorist activities. Resultantly, FIR was registered, investigation was conducted, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident.
- 5) FIR No.52/2017 dated 02.04.2017 under Section 13 of U LAP Act was registered at Police Station Baramulla to the effect that some anti-national elements, namely, Tariq Ahmad War, Bashir Ahmad Sofi, Masarat Alam Bhat, Irshad Ahmad Bhat, Sajad Ahmad Khan, etc., who were then lodged in Sub-Jail Baramulla, were under the garb of meeting their associates, illegally obtained mobile phones and were carrying out unlawful activities from jail. Resultantly, FIR was registered, investigation conducted, incriminating materials, like mobile phones, sim cards, diaries, envelops, mobile chargers, etc. were recovered, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident.
- 6) He has relied upon the certified true copies/English translations of the FIR Nos. 69/1999, 215/2010, 137/2013, 258/2016 and 52/2017, charge-sheets filed in FIR Nos. 69/1999, 215/2010 and 137/2013 and copies of the statements of the witnesses recorded under Section 161 Cr.P.C., Seizure Memos and Arrest Memos have been exhibited as Ex. PW-15/1 to PW-15/33A in the present proceedings.

151. Ms. Warisha Farasat, learned counsel for the association cross examined PW-15 on 15.05.2024. The same is reproduced hereunder:-

“Q. I put it to you that the Arrest Memo dated 31.08.2013 filed as Exhibit PW15/14A along with your affidavit at page 60 in FIR No.137/2013 was, in fact, executed in jail itself as he was already in custody continuously since 2010?

A. It is correct.

Q. I put it to you that the Arrest Memo dated 22.03.2017 filed as Exhibit PW15/26A along with your affidavit at page 86 in FIR No. 258/2016 was, in fact, executed in jail itself as he was already in custody continuously since 2010?

A. It is correct.

Q. Whether the statements recorded under Section 161 Cr.P.C. in FIR No.52/2017 filed as Exhibit PW15/30A at page No.96 of your affidavit record the names of the persons from whom the mobile phones referred to therein were recovered?

A. No.

Q. Can you tell who was the initial I.O. in the FIRs referred to in your affidavit?

A. I do not know the name of the initial I.O. in the FIRs with regard to which I have deposed.

Q. I suggest to you that you do not have any personal knowledge of the veracity of the contents that have been sworn in your affidavit.

A. It is incorrect.

Q. Are you aware of the name of the association with regard to which you are deposing before this Tribunal?

A. Yes. The name of the association is “Muslim League Jammu Kashmir (Masarat Alam Faction” (MLJK-MA).

Q. Have you enclosed the contents of the speech which is the subject matter of FIR No.69/1999 along with your affidavit?

A. The same is mentioned in the FIR itself.

Q. Where is the Case Diary in respect of the FIR No.69/1999?

A. It must be in the court.

I am not aware as to whether the initial I.O. in the FIR No.69/1999 continued to act as such or whether there was a change in the I.O.”

PW-16

152. **Shri Satish Kumar (PW-16)** tendered his affidavit as Ex.PW-16/A; he stated that he is posted as Sub-Divisional Police Officer, Handwara, Kashmir and is the Supervisory Officer in respect of FIR Nos.140/1999 and 141/2000. He deposed with regard to these FIRs as under:-

- 1) FIR No.140/1999 under Sections 13 of ULAP Act and 188 of RPC was registered on 08.09.1999 at Police Station Handwara on the basis of a written docket received in PS Handwara to the effect that SHO alongwith other team members was performing patrolling duty in the area of Karalgund, where they saw some persons affiliated with Hurriyat Conference figuring 12 persons led by SAS Geelani raising slogans due to which a mob was assembled. SAS Geelani provoked the general public against the Government of India. The Hurriyat activists provoked and instigated the general public for partition of Jammu & Kashmir from India and against the sovereignty of the nation. Further, they also cautioned the public not to participate in the elections and to restrain from the general elections. Besides, they raised anti-national slogans and provoked the general public against the integrity and sovereignty of the nation. Resultantly, FIR was registered, investigation conducted, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident. Chargesheet (Ex.PW16/2) dated 13.20.2023 in respect of all the accused persons (except SAS Geelani and Mohd Ashraf Sehra as they have passed away), has been filed in the jurisdictional court.

- 2) FIR No.141/2000 under Sections 13 of UAPA and 188 of RPC was registered on 01.11.2000 at Police Station Handwara on the basis of an information received by ASI Ahamadullah, while he was performing special duties in town Handwara, to the effect that SAS Geelani, Masarat Alam and Sheikh Ab. Aziz affiliated with Hurriyat Conference, have come in the residential house of Aijaz Ahmad Wani for condolence of deceased Aijaz Ahmad Wani who was killed by the Special Forces at Kak Gali Karnah while ex-filtrating to PoK on 30.10.2000 for obtaining illegal arms and ammunition at the instigation of Hurriyat activists for the same and that the Hurriyat activists provoked and instigated the general public for secession of Jammu and Kashmir from India and against the sovereignty of the nation. The Hurriyat leaders, while violating restrictions, pressurized the shopkeepers to close their shops and also provoked the general public for joining militant ranks. Consequently, FIR was registered, investigation conducted, statements of witnesses were recorded under Section 161 of Cr.P.C., who have corroborated the incident. Chargesheet (Ex.PW16/8) dated 09.12.2022 in respect of the accused persons (except SAS Geelani and Sheikh Abdul Aziz as they have passed away), has been filed in the jurisdictional court.
- 3) He has relied upon the certified true copies/English translations of the FIR Nos. 140/1999 and 141/2000, charge-sheets filed in FIR Nos. 140/1999 and 141/2000 and copies of the statements of the witnesses recorded under Section 161 Cr.P.C., have been exhibited as Ex. PW-16/1 to PW-16/10A, photograph of SAS Geelani addressing the gathering alongwith other co-accused(Ex.PW16/6) in the present proceedings.
153. Ms. Warisha Farasat, learned counsel for the association cross examined PW-16 on 15.05.2024. The same is reproduced hereunder:-

Q. When did you join the police force?

A. I joined the police force in the year 2012.

Q. Who was the initial I.O. in FIR No.140/1999?

A. As per record, SHO, Police Station Handwara was the initial I.O. in respect of the FIR No.140/1999.

Q. Who was the IO when the charge-sheet was filed on 13.12.2023?

A. The SHO, Police Station Handwara was the I.O. at the time of filing of the charge-sheet.

Q. Do you know whether a continuous Case Diary was maintained in respect of FIR No.140/1999?

A. I do not know. The I.O. would be in a better position to inform in this regard.

Q. Can you tell what is the source of the photograph filed as Exhibit PW16/6 at page 28 of your affidavit?

A. I cannot say.

Q. Is there a date on the above said photograph?

A. The photograph filed along with my affidavit, as mentioned above, does not bear any date.

Q: I put it to you that you are not competent to depose on behalf of the witness(s) whose statements you have attached (Exhibits PW16/3 to 16/5) as these statements were neither made by you nor recorded by you?

A. *It is incorrect.*

Q: I suggest that you cannot testify as to the varsity of the factual aspects, as referred to in your affidavit.

A. *It is incorrect.*

Q: I put it to you that the sanctity of the investigation is completely compromised because it is so delayed given the gap of 24 years.

A. *It is incorrect.”*

PW-17

154. **Mohd. Saleem Bhat (PW-17)** tendered his affidavit as **Ex.PW-17/A**; he stated that he is posted as Deputy Superintendent of Police, PC, Kralgund, Kashmir and is the Supervisory Officer in respect of FIR Nos.52/2010 and 30/2015. He deposed with regard to these FIRs as under:-

- 1) FIR No.52/2010 under Sections 307, 148, 149, 332, 336 of RPC was registered on 28.06.2010 at Police Station Kralgund on the basis of an information that police officials, including Superintendent of Police, Kralgund, SDPO Kralgund, SOG Kralgund, nafri of DPL Kralgund and CRPF 90-BN G-Coy were performing duties a Wungam-Crossing when the Hurriyat activists gave a call for “Sopore Chalo”. Upon the said call, a violent mob headed by (i) Showkat Ah. Bhat S/o Ab. Ahad (ii) Reaz Ahmad Naikoo (iii) Mehraj Din @ Cheeni and various others, whose names are mentioned in the chargesheet, including the youths of different areas, approached the Wungam-Krangund area while raising the slogans such as “Go India Go Back, Kashmir Chod Dou” and that the said violent mob was equipped with lathis and stones and attacked CRPF personnel and other nafri deployed in the area and pelted stones upon them with the intention to kill them. However, the violent mob was and led by using tear gas shells to disperse them. As a result of the violent attack of the mob, the Superintendent of Police Kralgund, SDPO Kralgund and other nafri got injured and were shifted to Hospital Kralgund for treatment. Consequently, FIR was registered, investigation conducted, statements of witnesses were recorded under Sections 161 and 164 of Cr.P.C., who have corroborated the incident. Chargesheet (Ex.PW17/5) dated 17.06.2011 has been filed in the jurisdictional court.
- 2) FIR No.30/2015 under Sections 147 and 124-A of RPC and 13 of ULA(P) Act was registered on 16.04.2015 at Police Station Kralgund on the basis of an information that HC Manzoor Ahmad No.412/H alongwith other nafri was on patrolling duty at village Ganapora and Lalbug, wherein they noticed that Hurriyat leader of Muslim League, namely, Masarat Alam Bhat and Abdul Ahad Para S/o Mohd Sultan Para R/o Badrah Bala with some associates, had visited village Lalbug and Ganapora secretly. During the visit to Lalbug, Hurriyat leader Masarat Alam Bhat, alongwith other associates, had conducted secret meeting in the house of one Khazir Mohd. Dar S/o Haji Gh. Qadir Dar R/o Lalbug, whereafter the associates of Hurriyat came on roadside in the shape of crowd and shouted anti-national slogans. It was further disclosed in the information that the Hurriyat leader alongwith the associates also conducted another secret meeting at Village Ganapora in the House of Abdul Rashid Bhat S/o Shams-ud-Din Bhat R/o Ganapora and after concluding the said meeting, they went towards Jamia Masjid Ganapora for offering Namaz where they delivered a speech to the public against the Government of India and also provoked the youth of the area to join Hurriyat. Therefore, the FIR was registered, investigation was conducted, statements of witnesses were recorded under Section

161 of Cr.P.C., who have corroborated the incident. Chargesheet (Ex.PW17/9) dated 01.12.2022 has been filed in the jurisdictional court.

- 3) He has relied upon the certified true copies/English translations of the FIR Nos. 52/2010 and 30/2015, charge-sheets filed in FIR Nos.52/2010 and 30/2015 and copies of the statements of the witnesses recorded under Sections 161 and 164 of Cr.P.C., Seizure memo, which have been exhibited as Ex. PW-17/1 to PW-17/9A in the present proceedings.

155. Ms. Warisha Farasat, learned counsel for the association cross examined PW-17 on 15.05.2024. The same is reproduced hereunder:-

“Q. I put it to you that the persons referred to in para 6 of your affidavit are not the members of the proscribed association.

A. I cannot say. (Vol.) Apart from the three persons specifically referred to in para 6 of my affidavit, various other persons are also mentioned in the charge-sheet. A perusal of the charge-sheet reveals that the accused person at S.No.27, namely, Ab. Ahad Para S/o Mohd. Sultan R/o Badra Bala Kralgund, is the Acting Chairman of Muslim League Jammu Kashmir (MLJK). Likewise, person mentioned at S.No.25, namely, Mohammad Akaram Najar S/o Ab Gaffar and at S.No.12, i.e., Mehraj Din @ Chunni S/o Gh. Mohammad Bhat R/o Watergam are the accused persons and the members of the proscribed association.

Q. I put it to you that the said persons referred by you are not members of the proscribed association (MLJK).

A. It is incorrect.

Q. Does the FIR No. 30/2015, the translated copy of which is filed as Exhibit PW17/6A at page 27 of your affidavit, mention any specific slogan or statements?

A. No.”

PW-18

156. **Sh. Imtiaz Ahmad Mir (PW-18).** Although the name of this witness was furnished in the list of witnesses submitted by learned counsel for Union of India on 09.05.2024, yet Mr. Rajat Nair, learned counsel for Union of India requested that he shall not be deposing before this Tribunal, therefore, his name be dropped from the list of witnesses. Accordingly, at request of learned counsel for Union of India, his name was dropped from the list of witnesses vide order dated 16.05.2024.

PW-19

157. **Shri Rajesh Kumar Gupta (PW-19)** tendered his affidavit as **Ex.PW-19/A**; he stated that he is presently posted as Director (CT) in the Government of India, Ministry of Home Affairs, New Delhi and is authorized to depose before this Tribunal as he has been dealing with all the relevant records in his official capacity. He deposed that the notification No.S.O.5462(E) dated 27th December, 2023 issued by the Central Government is based on the information and material received from the central intelligence agency and Criminal Investigation Department of Government of Union Territory of Jammu & Kashmir, with regard to the unlawful activities of the Muslim League Jammu and Kashmir (Masarat Alam Faction) (MLJK-MA) and that based on these information, a note was prepared for the consideration of the Cabinet Committee on Security and draft notification was also annexed to the said note and sent

to the Cabinet Secretariat and thereafter, the Cabinet Committee on Security took the decision and approved the proposal contained in the above note in the meeting held on 15th December, 2023 and accordingly, the declaration was made and published vide notification dated 27th December, 2023, bearing No. S.O.5462(E).

158. He further deposed that that in terms of sub-section(1) of Section 5 read with sub-section (1) of the Unlawful Activities (Prevention) Act, 1967 and vide notification dated 15th January, 2024, bearing No.S.O.167(E), this Hon'ble Tribunal was constituted and the background note was submitted to this Hon'ble Tribunal in terms of Rule 5 of the Unlawful Activities Prevention Rules 1968, vide letter dated 24th January, 2024 based upon the material/information as contained in the concerned files and that the various cases registered by the Jammu and Kashmir Police, National Investigation Agency and Directorate of Enforcement throw light on the unlawful and subversive activities of Chairman and members of MLJK-MA.

159. He further deposed that the officers concerned of the Union Territory of Jammu and Kashmir have filed affidavits before this Hon'ble Tribunal in respect of cases registered in Union Territory of Jammu and Kashmir against the Chairman and members of MJLK-MA under various provisions of law including the Unlawful Activities (Prevention) Act, 1967, Ranbir Penal Code etc. and that the officers concerned of the National Investigation Agency (NIA) and Directorate of Enforcement (ED) have also filed affidavits before this Hon'ble Tribunal in respect of the cases registered against the members of MLJK-MA under various sections of the Unlawful Activities (Prevention) Act, 1967, Indian Penal Code, 1860 and Prevention of Money Laundering Act (PMLA), 2002.

160. It is further deposed by this witness that various witnesses have already adduced evidence during the course of proceedings before this Hon'ble Tribunal in support of the declaration as contained in notification No. S.O.5462(E) dated 27th December, 2023 and that the evidence adduced clearly establishes that MLJK-MA is continuously indulging in unlawful activities which pose a serious threat to the internal security of the country and that in addition to the above adduced evidence, various intelligence inputs show that MLJK-MA is continuing its unlawful activities which are prejudicial to the security of the country. Considering all these facts, circumstances and evidences, which have been adduced before this Hon'ble Tribunal also, the MLJK-MA has been banned under Section 3(1) of the UAPA, 1967.

161. He further stated that as per the information received from various agencies, the Chairman and members of the MLJK-MA have been indulged in radicalizing and brainwashing the minds, and indoctrination of youth through provocative speeches for separation of Jammu and Kashmir from the Union of India and that they have indulged in unlawful activities aimed at disrupting the sovereignty and integrity of India, peace, secular fabric of the Indian Society and internal security and hence, it is justified that banning of MLJK-MA is necessary in the interest of national security, sovereignty and territorial integrity of India.

162. He further deposed that the original files (duly indexed) containing above mentioned central intelligence reports/inputs are being submitted in a **sealed cover** for the perusal of this Hon'ble Tribunal (**Exhibit PW19/3**).

163. He further deposed that the Central Government seeking the privilege for the original files mentioned as **Exhibit PW19/3** to the affidavit, relies on section 123 of Evidence Act read with Rule 3(2) of the Unlawful Activities (Prevention) Rules, 1968 and that the contents of the same are privileged and confidential in nature and the same cannot be made available to the banned association or to any third party as the Government considers it against the public interest to disclose the same to either the banned association or to any third-party inter-alia in terms of the provisions of Section 5 of the Unlawful Activities (Prevention) Rules, 1968.

164. He then deposed that the nature of the proceedings and the scope of inquiry before the Tribunal and the treatment which has to be given to documents in respect of which privilege has been claimed by the government or its nodal agency as has been authoritatively laid down under paras 20-22 by the Hon'ble Supreme Court in **Jamaat-e-**

Islami Hind Vs Union of India (1995) 1 SCC 428 in the specific context of the provisions of the Unlawful Activities (Prevention) Act, 1967 and that vide the said judgment of the Hon'ble Supreme Court, after interpreting the scheme of the UAPA and the rules framed thereunder, has unequivocally upheld the right of the government/prosecution/nodal agencies to claim privilege in respect of confidential documents in public interest. It is further stated that the documents for which claim of privilege is being sought, by their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document as dissemination of the same to public at large may impede/impeach the ongoing investigations/prosecutions against the incumbent banned organization or its members and can also entail cross border nation security concerns and therefore, the said documents can be verified by the Hon'ble Tribunal only.

165. It is further stated that MLJK-MA is promoting anti-national and separatist sentiments prejudicial to the integrity and security of the country and is tacitly supporting militancy and incitement of violence and is seeking secession of Jammu and Kashmir from the Union of India and that from the cogent and irrefutable evidences, which have emerged till now, that MLJK-MA is continuously encouraging a veiled armed insurgency and are openly advocating and inciting people to bring about a secession of a part of the territory of India from the Union and that it is also established that the activities of MLJK-MA are aimed at causing disaffection, disloyalty and dis-harmony by promoting feeling of enmity and hatred against the lawful government and the members of MLJK-MA are indulging and acting in a manner prejudicial to the territorial integrity and sovereignty of the India.

166. He further deposed that from the above, it is evident that MLJK-MA is indulging in anti-national activities posing a serious threat to the sovereignty and integrity of India and if the MLJK-MA is not banned, the activists and sympathizers of MLJK-MA will pose a serious threat to the communal harmony, internal security & integrity of the country and it is further stated that through material available on record and inputs received from various agencies the MLJK-MA has been incessantly encouraging and actively and continuously pursuing the agenda of securing secession of Jammu and Kashmir from the Union of India by inciting and orchestrating violence.

167. He lastly deposed that in view of the submissions made herein above, the declaration made by the Central Government vide Notification No. S.O.5462(E) dated 27th December, 2023 may please be confirmed and upheld in public interest as well as national interest.

168. Ms. Warisha Farasat, learned counsel for the association cross examined PW-19 on 16.05.2024. The same is reproduced hereunder:-

“(Attention of the witness is drawn to para 23 at page 25 of the Background note submitted under Rule 5 of the Unlawful Activities (Prevention) Rules, 1968)

Q. Have you put anything on record to show that any such school, referred to in para 23 of the background note is existing/functioning from 2015 and can you give details of such school where it has been established?

A. No. (Vol.) The aforesaid statement has been made based on the records/information in the files which has been submitted today to this Tribunal in a sealed cover.

Q. Can you tell the name of the school or the district from where it is operating?

A. No.

Q. Is there “Quaid-e-Azam” House at Srinagar?

A. I do not know.

Q. I put it to you that Ashiq Hussain @ Mohd. Qasim @ Faktoo was never a member or had any association with MLJK.

A. It is incorrect. (Vol.) From the record, it is revealed that Ashiq Hussain @ Mohd. Qasim @ Faktoo was the Patron of the proscribed association.

Q. Can you give details of the specific documents on the basis of which you say that Ashiq Hussain @ Mohd. Qasim @ Faktoo was the patron of the proscribed association?

A. My above statement is based on the records of the intelligence reports/inputs.

Q. I put it to you that the statement made in para 19 of the Background Note is not based on any document or input whatsoever.

A. It is incorrect.

(The attention of the witness is drawn to the list of FIRs mentioned in Annexure ‘A’ filed alongwith the affidavit Ex.PW19/A)

Q. Has any of the FIRs referred to in Ex.PW19/A resulted in any conviction?

A. Accused at S.No.3, i.e., Ashiq Hussain @ Mohd. Qasim @ Faktoo is serving life imprisonment.

Q. Is there any other FIR which has resulted in any conviction?

A. In the NIA case referred to at S.No.1 of the list of cases mentioned at Annexure-A, one of the accused, i.e., Yasin Malik, has pleaded guilty and has been convicted.

Q. Whether any member of the proscribed association has been convicted in any other cases referred to in your affidavit?

A. In the case referred to at S.No. 3 of the list of cases mentioned in Annexure-A, Ashiq Hussain @ Mohd. Qasim @ Faktoo, who is a member of the proscribed association, has been convicted. (Vol.) I cannot say whether there is any conviction in any other case.

Q. I suggest to you that Masarat Alam has been in near continuous custody at least since 2005.

A. I cannot say.”

VIII. FAILURE ON THE PART OF THE ASSOCIATION TO ADDUCE EVIDENCE IN THESE PROCEEDINGS

169. As noted hereinabove, pursuant to the directions issued by this Tribunal, a list of witnesses was filed on behalf of the association, which is as under:-

Sl. No.	Name of the witness	Witness no.
1.	Sh. Farooq Ahmad Bhat, Tawheed Abad Sopore, Jammu & Kashmir	RW-1
2.	Sh. Feroz Ahmad Khan, Kaakpura, Pulwama, Jammu & Kashmir	RW-2
3.	Sh. Sajad Ahmad Navoo, Sumbal Naidkai, Jammu & Kashmir	RW-3
4.	Sh. Ravi Nair, Ramkrishna Ashram Marg, Gole Marg, New Delhi.	RW-4

170. On 15.05.2024, it was submitted by the learned counsel for the association that two of its witnesses viz. Feroz

Ahmad Khan and Sajad Ahmad Navoo had been arrested/detained by the Jammu & Kashmir Police. In this regard, the order dated 15.05.2024 specifically recorded the submissions of the parties as under:-

"Vide order dated 25.4.2024, learned counsel for the parties were directed to file their respective list of witnesses. Pursuant thereto, learned counsel for the association has filed a list of its witnesses as under:-"

Sl. No.	Name of the witness	Witness no.
1.	Sh. Farooq Ahmad Bhat, Tawheed Abad Sopore, Jammu & Kashmir	RW-1
2.	Sh. Feroz Ahmad Khan, Kaakpura, Pulwama, Jammu & Kashmir	RW-2
3.	Sh. Sajad Ahmad Navoo, Sumbal Naidkai, Jammu & Kashmir	RW-3
4.	Sh. Ravi Nair, Ramkrishna Ashram Marg, Gole Marg, New Delhi.	RW-4

During the proceedings yesterday, it had been submitted by learned counsel for the association that out of the aforesaid list of witnesses, following witnesses have been detained in custody by the Jammu & Kashmir Police:-

- RW-2 (Sh. Feroz Ahmad Khan)

The said witness was detained on the evening of 11.5.2024 by the Jammu & Kashmir Police, P.S. Khanyr. Information to this effect was stated to have been given to the learned counsel for the association by the brother of the said witness. Today, it is submitted that late yesterday evening, information was received that the aforesaid witness was released from custody on 14.5.2024. This information is also stated to have been received by learned counsel, from the brother of the said witness.

- RW-3 (Sh. Sajad Ahmad Navoo)

Learned counsel for the association states that this witness was arrested/detained on 08.5.2024 by Jammu & Kashmir Police, P.S. Sumbal. Learned counsel submits that this information was given to her by the wife of the said witness telephonically.

Learned counsel submits that, in these circumstances, it has not been possible for her to file the affidavits of evidence of concerned witnesses, who are to depose on behalf of the association. It is further submitted that an endeavour shall be made to ensure that the said witnesses appear for recording of their statements before this Tribunal on the date fixed for the purpose i.e. on 20.5.2024 at 11.00 A.M. and on 21.5.2024 at 10.30 A.M. at Srinagar.

Learned counsel for the Union of India submits that no arrest/detention, as alleged by the learned counsel for the association, has, in fact, taken place. He submits that he shall be filing an appropriate affidavit in this regard. He submits that completely false and fictitious allegations have been made by the learned counsel for the association to impede the proceedings before this Tribunal to avoid the inevitable consequences of not being able to adduce any evidence in support of its contentions.

Both the association, as also the UOI, are at liberty to file affidavit/s in support of the aforesaid submissions.

This Tribunal has scheduled sittings in Srinagar on 20.5.2024 and 21.5.2024, at the specific request of learned counsel for the association, who had requested that the statements of the witnesses on behalf of the association be recorded at Srinagar instead of Delhi. A public notice to this effect has also already been issued.

In the circumstances, it is hoped and expected that the association would file requisite affidavits of the concerned witnesses before the next date of hearing in Srinagar, with advance copy to the learned counsel for the Union of India, so that their statement can be recorded on the date fixed."

171. Noteably, despite the liberty granted by this Tribunal to the association, as recorded in the order dated 15.05.2024, no such affidavit confirming the submissions made by the learned counsel for the association came to be

filed on behalf of the association. On the other hand, four affidavits came to be filed on behalf of the Union of India on the aforesaid aspect.

172. The relevant portions of the affidavits that came to be filed on behalf of the Union of India are as under:-

(i) Affidavit of Lakshay Sharma, Senior Superintendent of Police, Bandipora, Kashmir

"1. That I am working as above and am supervisory officer of all the police stations coming within the jurisdiction of Bandipora District, Kashmir. I state that today I have been provided with a list of witnesses dated 02.05.2024, filed on behalf of Muslim League Jammu & Kashmir (Masarat Alam faction) before this Hon'ble Tribunal. I have been further informed that it has been alleged that a proposed witness namely 'Sajad Ahmad Navoo' R/o Sumbal Naidkhai, Jammu & Kashmir listed at S. No. 3 of the said list has been arrested to prevent him from deposing before this Hon'ble Tribunal.

2. With regard to the above allegation, I respectfully state that the said allegation is incorrect. I state that I have verified from all the concerned Police Stations falling within Bandipora district of Kashmir and state that no person with the name of Sajad Ahmad Navoo' R/o Sumbal Naidkhai, Jammu & Kashmir has been arrested in District Bandipora between 01.05.2024 to 13.05.2024.

(ii) Affidavit of Ms. P.D. Nitya, Senior Superintendent of Police, Pulwama, Kashmir

"1. That I am working as above and am supervisory officer of all the Police Stations coming within the jurisdiction of Pulwama District, Kashmir. I state that today I have been provided with a list of witness dated 02.05.2024, filed on behalf of Muslim Leage Jammu & Kashmir (Masarat Alam faction) before this Hon'ble Tribunal. I have been further informed that it has been alleged that a proposed witness namely 'Feroz Ahmad Khan' R/o Kakapora, Pulwama listed at S. No. 2 of the said list has been arrested to prevent him from deposing before this Hon'ble Tribunal.

2. With regard to the above allegation I respectfully state that the said allegation is incorrect. I state that I have verified from all the concerned Police Stations falling within Pulwama district of Kashmir and state that no person with the name of Feroz Ahmad Khan R/o Kakapora, Pulwama has been arrested in District Pulwama between 01.05.2024 to 13.05.2024".

(iii) Affidavit of Sh. Showkat Ahmad Dar, Jkps, Superintendent of Police, North Zone, Srinagar

"2. I state that as far as the alleged detention of Feroz Ahmed Khan is concerned, I have been told that initially on 14.05.2024 statement was made that the said witness was arrested from his place of residence as mentioned in the list of witness produced by the proscribed organization[i.e. Pulwama] and once the said fact was rebuffed by way offidavit filed by the SSP Pulwama who had expressly stated that no such arrest was made, the stand was changed on 15.05.2024 by alleging that the said witnesses, namely Feroz Ahmed Khan was illegally detained in Khanyar Police Station of Srinagar while the counsels by the Prescribed Organization were in Srinagar to prepare his affidavit of evidence.

3. It is stated that the falsity of the said averment is clear from the fact That though the counsel of the proscribed organisation were in Srinagar and were allegedly aware that the said witness was illegally detained however, despite that neither any complaint was made nor any legal proceeding were ever initiated by them or any other counsel against the said alleged and purported illegal detention.

4. It is stated that without taking any legal proceedings wild and reckless allegations of illegal detention is made orally before this Rondle Tribunal The said statement in absence of any legal proceedings token by the Proscribed Organization clearly shows that the said statements are not made bona fide but are made for extraneous malicious purposes to impede the judicial proceedings going on before this Hon'ble Tribunal.

5. I state that in so far as witness Feroz Ahmed Khan is concerned as the statement was made that he was illegally detained in Khanyar Police Station of Srinagar from 12th May 2024 to 15th May 2024, a fresh verification exercise was conducted within the North zone Srinagar fin which p/s Khanyar also falls) to ascertain as to whether any person with the name of Feroz

Ahmed Khan was ever arrested or detained in the month of May. 2024 in the district of Srinagar.

6. I state and submit that pursuant to the said verification exercise, name of one person namely Feroz Ahmad Khan S/o Ab. Gani Khan R/O Begum Bagh Kaka pora A/P KooliporaGousia Colony, Khanyarcropp up.

7. It is stated that the said Feroz Ahmed Khan is a listed Over Ground Workers ('OGW'). I state that there are around 123 listed Over Ground Workers ('OGW') in the North zone of District Srinagar out of which 30 OGW are listed in PS Khanyar, in which the subject Feroz Ahmad Khan S/O Ab. Gani Khan R/O Begum Bagh Kaka-Pora A/P KooliporaGousia Colony, Khanyar is one of them.

8. It is pertinent to state and submit here that OGW's are people who had been associated with the militant organizations and are still providing assistance and facilitations to the militant organizations. I state that based on the threat perception caused by these OGW's and period of their association with the Militant and anti-national organizations are categorized as A, B and C. These are most dangerous OGW's having association with the militant organizations and antinational organizations. since many years. I state that Feroz Ahmad Khan having an association of more than three decades with the militant and anti-national organizations is a category C OGW in the list. He had exfiltrated to Pakistan for obtaining illegal arms training in 1990 and had infiltrated back into the valley in the year 1991. He remained an active militant of AL Jihad outfit and has two FIRs against him name. Viz FIR No- 111/2010 U/S 148,149,336,332,427,307 RPC 13ULA (P) Act of P/S Shergari and FIR No-466/2016 U/S 148,149,336,427,307 RPC of P/S Pulwama.

9. I state that as a preventive measure these OGW's are called to the concerned police stations for counselling and furnishing their bonds U/s 107 Cr.P.C on or before any major important event in the UT of J&K, such as Republic or Independence Day, major festivals where breach of peace is suspected, visits of Prime Minister or any other Constitutional Functionary, Elections etc.

10. I state that in light of the Parliamentary Elections scheduled on 13.05.2024 in Srinagar as a matter of practice and for preventive purposes Feroz Ahmad Khan was called in the morning at 8:10 AM in Khanyar Police Station along with 09 other listed OGW's of the area for the purpose of taking a bond under section 107 of CrPC from the executive magistrate of the area. I state that the process of calling OGWs for executing a bond started from the start of month of May and subject to the administrative exigencies they were called in the batches. I state that most dangerous OGW's were called on 13.05.2024 i.e on the poling day and they remained within the precincts of the police station till evening till the bond was signed before the concerned Executive Magistrate who was also responsible for conducting the elections and was not available anytime before 7 PM and were allowed to go back to their respective homes after execution of the bonds and hence the contention that the said Feroz Ahmed Khan was illegally detained for continuously 3-4 days or any other period of time is completely incorrect and False.

11. I state that Feroz Ahmed Khan was called as preventive measure as per the prescribed validly legal proceedings in which he has been regularly participating from a long time. Further, the general diaries of all such proceedings are uploaded a real time for public view in the official website CCTNS and are available for public viewing and as such no secrecy is entertained in this regard. Without admitting that the Feroz Ahmad Khan called on 13.05.2024 is the same person listed in the list of witnesses filed by the Proscribed Organization. I State that the contention of the proscribed organisation that Feroz Ahmed Khan was prevented from deposing before this Hon'ble tribunal by keeping him in continuous custody/illegal detention at an undisclosed location is ex-facie false and misleading.

12. I further state and submit that calling Feroz Ahmad Khan along with other OGWs for executing the bond on 13.05.2024 is not an isolated incident. Even earlier also he was called on 20.04.2024 with regard to the Parliamentary elections in other districts of UT of J&K and a bond U/s 107 Cr.P.C was furnished by him before the concerned magistrate on the said date also.

13. Prior to that he was called on 20.02.2024 and 05.03.2024 due to Prime Minister's visit in Kashmir and he duly furnished the requisite bond for keeping peace and security in the valley during the said period. In 2023 he was called on 13.05.2023 for the same purpose and also in 2022 he was called on 02.02.2022 for executing section 107 CrPC Bonds.

14. I State that calling of these OGW's during the important events and obtaining their bonds U/s 107 Cr.P.C is an necessary administrative Requirement for maintaining peace in the society as they are still associate with the militant organizations who time to time try to infiltrate in Kashmir and breach the peace of the society in general by making uncalled detrimental attacks of Police, Forces, local residents and Tourists.

15. It is pertinent to state and submit here that the person namely Feroz Ahmad Khan referred above was very well available at his residence on 12th May 2024 and was not even called at the Police Station on that day. moreover the persons called on 13.05.2024 were also not stopped for using their mobile phones etc. and were merely asked to be within the precincts of the Police Station till their execution of the bonds and immediately after that they were permitted to go back to their respective home and hence after 8:30 PM on 13.05.2024 also he was available at this residence or any other place for meeting people of his wish and choice."

(iv) Affidavit of Sh. V.K. Birdi, IPS, Inspector General of Police, Kashmir Zone, Srinagar

"2. I respectfully state and submit that the present further affidavit is being filed by me in view of the grave and serious allegations levelled by the Proscribed Organization against the manner in which J&K Police functions. I state and submit that I have been informed that during the course of hearing of the present case scheduled on 14.05.2024, an oral allegation was levelled that the two proposed witnesses, namely; Firoz Ahmad Khan and Sajad Ahmad Navoo, have been arrested by the J&K Police for the purpose of preventing them from deposing before this Hon'ble Tribunal and the J&K Police in general practice detains people unauthorizedly.

3. In view of the said allegation, the respective SSPs of the District Pulwama and Bandipora have already filed their affidavits, both dated 15.04.2024, expressly stating that no arrest of persons with above name were made at any time between 1st of May to 14th of May 2024 in their respective districts.

4. I state that SP North Srinagar has also filed a separate Affidavit explaining the calling of a person namely Feroz Ahmad Khan who is residing in Khanyar, Srinagar and is a listed OGW and has also explained the need for calling him and other OGW's and the manner and circumstances in which he along with other OGW's remained in the Police Station on 13.05.2024.

5. I respectfully state and submit that I have been also informed that after the correct position has been brought to the knowledge of this Hon'ble Tribunal on 15.04.2024, the counsel appearing for the Proscribed Organization changed her stand by alleging that the above named two witnesses were not arrested but were illegally detained by the J&K Police without any paperwork or authority of law and are kept in detention at an undisclosed location to restrain them from deposing before this Hon'ble Court. It was further averred that such illegal detentions were a matter of common practice in the valley.

6. I state and submit that such serious allegations were levelled by the counsels of the Proscribed Organization without adducing a single piece of document or evidence showing any arrest or detention much less illegal detention has ever been made.

7. In this regard, I respectfully state and submit that the aforesaid allegation that the J&K Police regularly indulges into illegal detentions of Kashmiri people and has illegally detained the two witnesses abovenamed is completely incorrect and false. I state and submit that every arrest or detention in the Kashmir region of the Union Territory of Jammu & Kashmir is made only after complying with the due process of law and as per the powers conferred on the authorities by the respective penal statutes such as Cr.P.C, IPC and PSA etc. As such the allegations of illegal detention made orally before this Hon'ble Tribunal are completely incorrect, false, thoroughly misconceived and appears to be an attempt to mislead this Hon'ble

Tribunal and to make fictitious record before this Tribunal with sole intent to dent the reputation of the J&K Police and administration.

8. It is stated that bald and reckless allegations of illegal detention are made orally before this Hon'ble Tribunal without any pith and substance clearly shows that the said statements were not made bona fide but were made for extraneous malicious purposes to impede the judicial proceedings going on before this Hon'ble Tribunal.

9. In respectful submission of the Deponent, wild and false allegations of illegal detention made by the Proscribed Organization sans any piece of evidence showing any sort of detention, proceedings being taken against such illegal detention. any affidavit of near kith and kin of the said two witnesses alleging such kind of a detention clearly shows that the said statement are motivated and are intended to mislead this Hon'ble Tribunal.

10. Without prejudice to the above, I respectfully state and submit that in view of the gravamen of the alleged statement made by the Proscribed Organization before this Hon'ble Tribunal, a wide scale verification exercise was undertaken by the J&K Police to ascertain whether any arrest or detention of the witnesses, as stated by the Proscribed Organization within the Union Territory of Jammu & Kashmir was taken between the dates given by the Proscribed Organization, it was found out that no illegal detention of any person much less the persons named above was made at any point of time.

11. I state that calling of these OGW's during the important events and obtaining their bonds U/s 107 Cr.P.C is an necessary administrative requirement for maintaining peace in the society as they are still associated with the militant organizations who time to time try to infiltrate in Kashmir and breach the peace of the society in general by making uncalled detrimental attacks of Polices, Forces, local residents and Tourists.

12. I respectfully state and submit that the listed OGW's are also very well aware that as an preventive measure during the elections or any other important event, they will likely be called for furnishing the bonds as they are suspected for breaching the peace of the society and as such the statement made before this Hon'ble tribunal that to prevent the said witness from deposing before this Hon'ble Tribunal some listed OGW was detained is sinister ploy to malign the J&K Police and the present proceedings. Furthermore, timing chosen for the purpose of getting their affidavits ie the poling day also speaks volume.

13. I state and submit that the practice of calling history sheeters, persons of bad character to police station before any major event/election for participating in 107 CrPC proceedings is a practice which is consistently followed across the country and the present case do not fall into any exceptional category.

14. In view of the above I respectfully state and submit that the allegation of illegal arrest/detention made by the counsel of the Proscribed organisation is false and misleading and is liable to be rejected and serious adverse inference is liable to be drawn against the Proscribed organisation for misleading this Hon'ble tribunal and for interfering with the administration of justice."

No response/affidavit in reply was filed on behalf of the association, controverting the above.

173. It is also noteable that the sitting in Srinagar was scheduled on 20.05.2024 to 21.05.2024 at the specific request of the learned counsel for the association who had requested that the statement of witnesses on behalf of the association be recorded in Srinagar instead of Delhi. Despite the same, on 20.05.2024, learned counsel for the association expressed inability to produce any witness. Even assuming that RW2, Sh. Feroz Ahmad Khan and RW3, Sh. Sajad Ahmad Navoo expressed their unwillingness to depose before this Tribunal, nothing was placed on record to justify/explain the non-availability of the other witness. On 20.05.2024, a statement was made by the learned counsel for the association that an endeavour would be made to produce atleast one witness on behalf of the association on 21.05.2024. The order dated 20.05.2024 records as under:-

“Although the matter has been fixed today for recording the statements of the witnesses on behalf of the association, learned counsel for the association has expressed inability to produce any witness today. She submits that an endeavour is being made to produce at least one witness for examination tomorrow i.e. on 21.05.2024.

Accordingly, at request of the learned counsel for the association, re-notify for the aforesaid purpose on 21.05.2024 at 10.30 A.M.”

174. Despite the aforesaid, on 21.05.2024, the association was again unable to produce any witness to depose on its behalf, even though, on the specific direction of this Tribunal, adequate and appropriate arrangements were made to facilitate the recording of evidence of any of the witness on behalf of the association including ensuring their security. The association also did not file any application seeking summoning of any witness.

175. Considering the aforesaid aspects, this Tribunal finds that the justification offered for the omission/failure on the part of the association to adduce any evidence is devoid of merit. However, this Tribunal is conscious that despite non-examination of the witnesses by the concerned organization, this Tribunal is required to make an “objective determination” as mandated in the judgment of the Supreme Court in *Jamaat-e-Islami Hind* (supra). The credibility of the material/evidence placed on record by the Central Government is required to be tested; the Supreme Court has cautioned that the procedure to be adopted must achieve this purpose and must not be reduced to mere acceptance of the “*ipse dixit*” of the Central Government”.

176. Thus, notwithstanding the failure on the part of the association to adduce evidence in these proceedings, this Tribunal is required to independently assess the credibility of the material / evidence placed on record by the Central Government and on the basis of arguments advanced by the learned counsel appearing on behalf of the association, and come to a conclusion as to whether or not there is sufficient cause for declaring the association unlawful.

IX. SUBMISSIONS ON BEHALF OF THE ASSOCIATION (MLJK-MA)

177. Since no witnesses appeared on behalf of the association on 20.05.2024 and 21.05.2024 at Srinagar, this Tribunal utilized the time for hearing arguments. Ms. Warisha Farasat, learned counsel appearing on behalf of the association (MLJK-MA), submitted that the Central Government, in exercise of powers conferred under Section 3(1) of the UAPA vide notification dated 27.12.2023 bearing no. S.O.5462(E) declared the Muslim League Jammu and Kashmir (Masarat Alam Faction) (“MLJK-MA/Association”) as “Unlawful Association”. Along with the notification, the Central Government also submitted a Background Note to the Tribunal containing factual averments in support of the grounds laid down in the Notification. She submitted that in order to affirm the proscription against the Association through the Tribunal, the Central Government would be required to substantiate the grounds laid down in the Notification and this exercise requires proving each specific allegation made in the Background Note, which will collectively determine if the association is engaged in unlawful activities under Section 2(1)(o) of the UAPA. She submitted that through the evidence led by the Central Government against the association, it is abundantly clear that there is no “sufficient cause” as defined in Section 4 of the UAPA for declaring the Association unlawful.

178. Ms. Farasat submitted that, at the outset, she would delve on three major points:-

I) Firstly, the “*Nature and Scope of Enquiry before the Tribunal*” which encapsulates:-

- (A) the application of the Indian Evidence Act, 1872;
- (B) the “*personal knowledge*” test laid down in the decision of *Jamaat-E-Islami Hind vs. Union Of India*, 1995 SCC (1) 428;
- (C) Standard of Proof;
- (D) Burden of Proof in the present proceedings.

- II) Secondly, the “*Examination of the Material adduced before the Tribunal*”, for which a detailed chart (Annexure-A) pointing out the alleged discrepancies/infirmities in the depositions of each of the witnesses, and the issues emerging from the chart have been deconstructed as:-
- (A) Entire evidence being hearsay;
 - (B) Delay in filing Chargesheets;
 - (C) Alleged incidents have been prior to constitution of MLJK-MA;
 - (D) Alleged incidents have been against persons who are not members of MLJK-MA;
 - (E) Inherent Bias in the Investigation.
- III) Finally, it was submitted by learned counsel that *even if the material at hand is taken at its highest, the alleged incidents do not amount to “unlawful activities” within the meaning of Section 2(1)(o) of the UAPA.*

179. Before delving into the issues as aforesaid, it was submitted by Ms. Farasat that MLJK-MA has been prevented from a right of fair hearing on account of inability to lead evidence due to State conduct. The witnesses of MLJK-MA have been prevented from deposing before the Hon’ble Tribunal. On 02.05.2024, the MLJK-MA had submitted a list of 4 (four) witnesses before the Tribunal. Thereafter, 2 (two) witnesses came to be detained by J&K Police forces on 08.05.2024 (P.S. Sumbal) and on 12.05.2024 (P.S. Khaniyar). It was contended that at first, the Central Government vehemently denied the factum of detention altogether arguing that the same is being falsely alleged by MLJK-MA. However, by way of the affidavit dated 20.05.2024, the Central Government backtracked on its previous version and accepted the factum of detention as against one of the witnesses, thereby corroborating the overall account of prevention of the witnesses from deposing before the Tribunal, on account of fear of being detained. Therefore, a reign of terror was allegedly created against the witnesses of MLJK-MA, admittedly on account of detention by the J&K forces. Thus, she submitted that in light of the same, a strong adverse inference may be drawn against the Central Government on account of the manner and conduct in which the proceedings have been conducted against MLJK-MA by preventing the witnesses from deposing before the Tribunal.

(I) Nature and Scope of Enquiry before the Tribunal

180. Coming back to her first point of defence “*Nature and Scope of Enquiry before the Tribunal*”, Ms. Farasat advanced arguments on:-

(A) Application of the Indian Evidence Act, 1872.

181. She submitted that according to Rule 3(1) of the Unlawful Activities (Prevention) Rules, 1968 (“UAP Rules”), a Tribunal in holding an inquiry under Section 4(3) of UAPA, shall follow “as far as practicable”, the rules of evidence laid down in the Indian Evidence Act, 1872 (“Evidence Act”). She submitted that the phrase “as far as practicable” in Rule 3(1) of the UAP Rules indicates the legislature’s intent to use the Indian Evidence Act as the guiding framework for this inquiry. She submitted that the Tribunal should, as far as possible, not deviate from the Indian Evidence Act. Even if the most restrictive reading is given to Rule 3(1) of the UAP Rules, the core and fundamental principles of the Indian Evidence Act cannot be dispensed with.

182. She further submitted that to understand the import of “as far as practicable” in Rule 3(1) of the UAP Rules, reference is required to be made to other legislations that address the applicability of the Evidence Act for the adjudicatory body therein. She then referred to two legislations:-

i) The Arbitration and Conciliation Act, 1996:-

“19. Determination of rules of procedure – (1) The arbitral tribunal shall not be bound by the Code of Civil Procedure, 1908 (5 of 1908) or the Indian Evidence Act, 1872 (1 of 1872)”

ii) The Family Courts Act, 1984:-

“14. Application of Indian Evidence Act, 1872 – A Family Court may receive as evidence any report, statement, documents, information or matter that may, in its opinion, assist it to deal effectually with a dispute, whether or not the same would be otherwise relevant or admissible under the Indian Evidence Act, 1872 (1 of 1872).”

183. With reference to the above provisions, she submitted that a careful reading of these provisions shows that the exclusion of the Evidence Act is more pronounced in the Arbitration Act, where the Arbitral Tribunal is explicitly not bound by it. Similarly, the Family Court can admit some evidence beyond the scope of the Evidence Act. If the legislature intended to free the Tribunal constituted under the UAPA from the Evidence Act or permit documents beyond principles of admissibility under the Evidence Act, it would have stated so in Rule 3(1) of the UAP Rules.

184. Ms. Farasat submitted that in **People’s Union for Civil Liberties vs. Union of India**, AIR 2004 SC 456, the Supreme Court discussed that for interpreting terms in the Prevention of Terrorism Act, 2002 (POTA), meanings could be derived from making reference to the Indian Penal Code, 1860 and the Code of Criminal Procedure, 1973 (“Cr.P.C.”). For example, Section 157 of Cr.P.C. requires that in cases of rape, the victim’s statement should “as far as practicable” be recorded by a female police officer. This is treated as a mandate, and deviations are rare, meaning thereby it is to be ensured that statements are typically recorded by a woman officer. Similarly, the phrase “as far as practicable” in Rule 3(1) of the UAP Rules should be treated as rather “mandatory” in nature.

185. The learned counsel for the association, in furtherance to the above point, submitted that in **Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra**, AIR 2005 SC 2277, the Apex Court has laid down that in considering the special and extraordinary laws, such as the UAPA that have very high penal consequences, the provisions must be given strict and narrow interpretation. The relevant paragraph has been reproduced hereunder:-

“In Kartar Singh vs. State of Punjab [(1994) 3 SCC 569], this Court observed: “352. It is true that on many occasions, we have come across cases wherein the prosecution unjustifiably invokes the provisions of the TADA Act with an oblique motive of depriving the accused persons from getting bail and in some occasions when the courts are inclined to grant bail in cases registered under ordinary criminal law, the investigating officers in order to circumvent the authority of the courts invoke the provisions of the TADA Act. This kind of invocation of the provisions of TADA in cases, the facts of which do not warrant, is nothing but sheer misuse and abuse of the Act by the police. Unless, the public prosecutors rise to the occasion and discharge their onerous responsibilities keeping in mind that they are prosecutors on behalf of the public but not the police and unless the Presiding Officers of the Designated Courts discharge their judicial functions keeping in view the fundamental rights particularly of the personal right and liberty of every citizen as enshrined in the Constitution to which they have been assigned the role of sentinel on the qui vive, it cannot be said that the provisions of TADA Act are enforced effectively in consonance with the legislative intentment.”

186. Therefore, in view of above, she submitted that the Evidence Act must guide the nature and inquiry before the Hon’ble Tribunal and in any case, certain fundamental principles such as inadmissibility of hearsay evidence, as applicable in the present case, cannot be dispensed with. The law against hearsay and the requirement of the maker of the statement (under Sections 161 and 164 of the Cr.P.C.) to prove the statement can be found in the decision of the Apex Court in **Bareilly Electricity Supply Co. vs. the Workmen & Ors.**, 1972 AIR 330, relevant portion of which reads as under:-

“... But the application of principle of natural justice does not imply that what is not evidence can be acted upon. On the other hand what it means is that no materials can be relied upon to establish a contested fact which are not spoken to by persons who are competent to speak about them and are subjected to cross-examination by the party against whom they are sought to be used. When a

document is produced in a Court or a Tribunal the questions that naturally arise is, is it a genuine document, what are its contents and are the statements contained therein true. When the Appellant produced the balance-sheet and profit and loss account of the Company, it does not by its mere production amount to a proof of it or of the truth of the entries therein. If these entries are challenged the Appellant must prove each of such entries by producing the books and speaking from the entries made therein. If a letter or other document is produced to establish some fact which is relevant to the enquiry the writer must be produced or his affidavit in respect thereof be filed and opportunity afforded to the opposite party who challenges this fact. This is both in accord with principles of natural justice as also according to the procedure-under Order XIX Civil Procedure Code and the Evidence Act both of which incorporate these general principles.”

(B) **“Personal Knowledge” Test laid Down in the decision of Jamaat-e-Islami Hind vs. Union Of India, 1995 SCC (1) 428**

187. Ms. Farasat submitted that without prejudice to the above, outside the realm of the Evidence Act, the Tribunal is bound by the decision of the Apex Court in *Jamaat-e-Islami Hind* (supra), in particular paragraph 30 thereof, which lays down the principle that evidence supported by “personal knowledge” will trump any other form of evidence led before the Tribunal by the other side and that in *Jamaat-e-Islami Hind* (supra), the Supreme Court had set aside the evidence that was brought on record, the entirety of which was based on official records, and the veracity of which could not have been tested by way of cross-examination. Therefore, for the purposes of “objective determination” of material placed on record, the same has to be backed with personal knowledge. The said paragraph of *Jamaat-e-Islami Hind* (supra) was referred to, which is reproduced hereunder:-

“The allegations made by the Central Government against the association Jamaat-E-Islami Hind - were totally denied. It was, therefore, necessary that the Tribunal should have adjudicated the controversy in the manner indicated. Shri Soli J. Sorabjee, learned counsel for the association, Jamaat-E-Islami Hind, contended that apart from the allegations made being not proved, in law such acts even if proved, do not constitute “unlawful activity” within the meaning of that expression defined in the Act. In the present case, the alternative submission of Shri Sorabjee does not arise for consideration on the view we are taking on his first submission. The only material produced by the Central Government to support the notification issued by it under Section 3(1) of the Act, apart from a resume based on certain intelligence reports, are the statements of Shri T.N. Srivastava, Joint Secretary, Ministry of Home Affairs and Shri N.C. Padhi, Joint Director, IB. Neither Shri Srivastava nor Shri Padhi has deposed to any fact on the basis of personal knowledge. Their entire version is based on official record. The resume is based on intelligence reports submitted by persons whose names have not been disclosed on the ground of confidentiality. In other words, no person has deposed from personal knowledge whose veracity could be tested by cross examination. Assuming that it was not in public interest to disclose the identity of those persons or to produce them for cross-examination by the other side, some method should have been adopted by the Tribunal to test the credibility of their version. The Tribunal did not require production of those persons before it, even in camera, to question them and test the credibility of their version. On the other hand, the persons to whom the alleged unlawful acts of the association are attributed filed their affidavits denying the allegations and also deposed as witnesses to rebut these allegations. In such a situation, the Tribunal had no means by which it could decide objectively, which of the two conflicting versions to accept as credible. There was thus no objective determination of the factual basis for the notification to amount to adjudication by the Tribunal, contemplated by the statute. The Tribunal has merely proceeded to accept the version of the Central Government without taking care to know even itself the source from which it came or to assess credibility of the version sufficient to inspire confidence justifying its acceptance in preference to the sworn denial of the witnesses examined by the other side. Obviously, the Tribunal did not properly appreciate and fully comprehend its role in the scheme of the statute and the nature of adjudication required to be made by it. The order of the Tribunal cannot, therefore, be sustained.”

188. Ms. Farasat submitted that the evidence affidavits led by the Central Government against the Association are devoid of any personal knowledge and that the so-called “*Supervisory Investigating*” officers, neither conducted the investigations nor recorded statements of witnesses, and, therefore, cannot be presumed to have personal knowledge of the facts in their affidavits. While a right to cross-examination was given to the Association, in the absence of witnesses having any personal knowledge, such right to cross-examine was rendered ineffective and the materials could not be adequately tested before the Hon’ble Tribunal so as to make an “*objective determination*”.

189. She then submitted that even if the documents appended to the evidence-affidavits qualify as “*public documents*”, the benefit of Section 65 of the Evidence Act cannot be extended in these proceedings. The nature of inquiry before the Tribunal is a serious judicial determination with severe consequences, distinguishing it from inquiries before other adjudicatory bodies and requiring a high threshold to be satisfied. The same can be understood from the decision in ***Jamaat-e-Islami Hind*** (supra), wherein the Supreme Court has held as under:-

“The nature of the inquiry preceding the order made by the Tribunal under Section 4 of the Act, and its binding effect, give to it the characteristic of a judicial determination distinguishing it from the opinion of the Advisory Board under the preventive detention laws.”

190. Ms. Farasat contended that even if a few depositions were backed by personal knowledge, the same would have added some credibility to the overall evidence led by the Central Government, however, the evidence, as it currently stands, fails to inspire any confidence, as it fails to meet the qualifying tests under the Evidence Act and the decision in ***Jamaat-e-Islami Hind*** (supra). In contrast to the position of the Central Government, where *en masse* affidavits of the officers, without any application of mind, have been filed, the Association has tendered a reply with a supporting affidavit of the Chairman of the Association, categorically denying the factual averments made in the Background Note. The same is based on the personal knowledge of the Chairman.

(C) Standard of Proof

191. For the standard of proof, Ms. Farasat submitted that the requirement to lead credible material, in accordance with the settled principles of the Indian Evidence Act, cannot be glossed over by saying that the threshold of proof before the tribunal is the “*test of greater probability*” in view of the observations made in ***Jamaat-e-Islami Hind*** (supra). She submitted that even if the standard of proof is balance of probabilities and not beyond reasonable doubt, the proof led ought to be very clear, considering the gravity of the offence in question. Further, this principle has been lucidly captured by the Supreme Court in the decision of ***Dr. N.G. Dastane vs. Mrs. S. Dastane***, 1975 2 SCC 326 as under:-

“The normal rule which governs civil proceedings is that a fact can be said to be established if it is proved by a preponderance of probabilities. This is for the reason that under the Evidence Act, Section 3, a fact is said to be proved when the court either believes it to exist or considers its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. The belief regarding the existence of a fact may thus be founded on a balance of probabilities. A prudent man faced with conflicting probabilities concerning a fact-situation will act on the supposition that the fact exists, if on weighing the various probabilities he finds that the preponderance is in favour of the existence of the particular fact. As a prudent man, so the court applies this test for finding whether a fact in issue can be said to be proved. The first step in this process is to fix the probabilities, the second to weigh them, though the two may often intermingle. The impossible is weeded out at the first stage, the improbable at the second. Within the wide range of probabilities, the court has often a difficult choice to make but it is this choice which ultimately determines where the preponderance of probabilities lies. Important issues like those which affect the status of parties demand a closer scrutiny than those like the loan on a promissory note: “the nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue” Per Dixon, J. in Wright v. Wright (1948) 77 C.L.R. 191 at p. 210; or as said by Lord Denning, “the degree of probability depends on the subject-matter. In proportion as the offence is grave, so ought the proof to be clear” Blyth v. Blyth

[1966] 1 A.E.R. 534 at 536. But whether the issue is one of cruelty or of a loan on a pronote, the test to apply is whether on a preponderance of probabilities the relevant fact is proved. In civil cases this, normally, is the standard of proof to apply for finding whether the burden of proof is discharged."

192. She submitted that Section 10 of the UAPA criminalizes "mere membership" as an offence. The language used by the aforesaid Section includes individuals who "is or continues to be a member" of the proscribed association. Therefore, the proscribing of the association will result in an immediate criminal consequence flowing on the members. Although it may be argued that only if a person continues to be a member, after the proscribing the concerned association, can he be tried under Section 10 of the UAPA. Nonetheless, it is important to remember, irrespective of who can or cannot be tried for "mere membership" under this Section, the fact remains that a criminal consequence follows. Moreover, once a charge is brought for membership, it can only be during the criminal trial that evidence can be led on whether a person continues to be a member, which in itself will require complex facts to be proven. In these circumstances, the highest standard of proof in the spectrum of balance of probabilities must be led by the Central Government.

193. The above principle has been upheld in the decision of the Supreme Court in *Redaul Hussain Khan vs. National Investigation Agency*, 2010 (1) SCC 521. In this case, the court has unequivocally laid down the principle that even if an association was not proscribed and a person was a member of the same, but the association was committing unlawful or terrorist activities, and it was subsequently proscribed, a section 20 or 38 charge under the UAPA, for mere membership could be brought against those individuals even when it was not proscribed.

194. Therefore, in view of the above, Ms. Farasat submitted that the settled principles of Evidence Act must be followed, even in case of satisfaction of "balance of probabilities". As such, even for proving a document in a civil proceeding, let's say in case of Agreement to Sell for instance, the genuineness of the same is required to be proved by examining the two witnesses to the Agreement to Sell, the same standard must be adopted in the present proceedings.

(D) Burden of Proof

195. With regard to burden of proof, she submitted that in case of reverse burden of proof, such a requirement is generally statutorily mandated, as in the case of Narcotic Drugs and Psychotropic Substances Act, 1985 and the Prevention of Money Laundering Act, 2002. Further, when the statute does not shift the burden of proof, then the said Section will be guided by Section 102 of the Evidence Act, which reads as under:-

"102. The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side"

196. The said section is applicable in case of a suit/ proceeding, as is the inquiry before the Tribunal. If no/deficient evidence is adduced before the Tribunal by the Association, the declaration of unlawful association by the Central Government, as against the association must not stand.

197. She further submitted that ordinarily, the adjudication by the Tribunal would be in the nature of quasi-criminal proceeding, as several criminal consequences on the members flow from proscription. Nonetheless, even if we were to apply the balance of probabilities threshold, it cannot be further diluted by considering anything and everything that is moved by the prosecution before the Tribunal.

(II) Examination of the evidence adduced by the Central Government

198. Ms. Farasat submitted that there are some discrepancies and the issues with the evidence led by all the witnesses, who have deposed on behalf of the Central Government as also on behalf of the State Government/Police

officials by way of their affidavits as well as their cross-examinations. The discrepancies have been pointed out by the learned counsel in the table given below:-

(Table showing Evidence Affidavits filed by the Central Government and the discrepancies therein)

PW-1 Ashaq Hussain, PW-1 Ashaq Hussain, SDPO, Zakoora, Srinagar	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/ Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA. In fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <u>However, the witness had no idea about the same, as mentioned in his cross examination on 30.04.2024.</u> <p>FIR No. 34/2006 dated 06.05.2006, P.S. Nigeen</p> <ul style="list-style-type: none"> - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - The Witness had no personal knowledge of the facts mentioned in the FIR. He confirms in his cross examination on 30.04.2024 that he neither filed the chargesheet in the case, nor was he posted at P.S. Nigeen when it was filed. - Complainant is a police official. - Chargesheet has been filed after a span of 16 years causing doubts on the credibility of the investigation. <i>[Ref: Pg. 19 of the Affidavit]</i> - 161 statements of 3 Police witnesses attached and all are identical. None of the 161 statements was recorded by the witness. - None of the persons mentioned in the seizure memo is anyway related to MLJK-MA. The witness was not even aware if the persons mentioned in the Seizure Memo were even part of MLJK-MA or not as mentioned in cross-examination on 30.04.2024. <p>FIR No. 60/2010 dated 11.09.2010, P.S. Nigeen</p> <ul style="list-style-type: none"> - The Witness had no personal knowledge of the facts mentioned in the FIR. - Complainant is a police official. - Mere allegation of raising anti-India slogans, neither contents of the speech mentioned nor the speech attached. - Chargesheet filed 9 years after the registration of FIR causing doubts on the credibility of the investigation. <i>[Ref: Pg. 38 of the Evidence Affidavit]</i> - Both 161 statements are of police witnesses, and are identical. None of the 161 statements was recorded by the witness. The witness who is currently the supervising officer of the case was not even aware whether case dairy contained relevant material to show efforts made by the police authorities to record statements of independent witness as recorded in his cross examination on 30.04.2024.
PW-2 Junaid Wali, SDPO, M.R. Gunj, Srinagar	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 70/2007 dated 22.04.2007, P.S. Nafri</p> <ul style="list-style-type: none"> - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - The witness had no personal knowledge of the facts mentioned in the present FIR. - Complainant is a police official. - The FIR mentions mere allegation of raising anti-India slogans, no speech attached to the Affidavit. - 161 statements of 3 Police witnesses attached and all are identical. 164 statements of 2 Police witnesses are identical. None of the above statements was recorded by the witness as confirmed by him in his cross examination on 01.05.2024. - Slogans mentioned in the speech do not constitute an offence.

	<ul style="list-style-type: none"> - Although it has been 17 years since registration of FIR, no chargesheet has been filed yet, causing doubts on the credibility of the investigation. - The seizure memo does not contain signatures of any independent witnesses, as confirmed by the witness during his cross-examination on 01.05.2024. The news clipping mentioned in the seizure memo are also not attached in the Affidavit.
PW-3 Sh. Mohd. Ashrif, SDPO, Saddar, Srinagar	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/ Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993.
FIR 238/1995 dated 29.06.1995, P.S. Saddar	
	<ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. He confirms in his cross examination on 30.04.2024 that he has derived his knowledge from news. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - Complainant is a police official. - MLJK-MA was not in existence, when the facts alleged in the FIR happened. - Both the 161 statements of police official are an exact reiteration of contents of the FIR. - No speech attached. - No Chargesheet attached. - Seizure memo mentions stones and blanket with no sign from an independent witness.
FIR No. 160/1996 dated 31.03.1996, P.S. Saddar	
	<ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - Complainant is a police official. - 161 statements are only of police officials, also they are exact reiteration of contents of the FIR. - No Chargesheet attached to the present Affidavit.
FIR No. 284/1999 dated 15.09.1999, P.S. Saddar	
	<ul style="list-style-type: none"> - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - The witness has no personal knowledge of the facts mentioned in the FIR. - Complainant is a police official. - Mere allegations of raising anti-India slogans, no speech attached to the Affidavit. - Both 161 statements are of Police witnesses and are identical. None of the statements was recorded by the witness. The witness in his cross-examination on 30.04.2024, <u>confirms that he has not put anything in his affidavit to show that police authorities have made efforts to record statements of independent witnesses and they have restrained from doing so.</u> - FIR is more than 25 years old, however, neither stage of investigation is mentioned nor any chargesheet is attached to the Affidavit.
FIR 128/2010 dated 27.06.2010, P.S. Saddar	
	<ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the FIR. - Complainant is a police official. - Mere allegations of posting anti India posters, no posters attached to the Affidavit. - 161 statements of 3 Police witnesses and all are identical. None of the

	<p>statements were recorded by the witness.</p> <ul style="list-style-type: none"> - No signatures of independent witness on the seizure memo, the witness himself has not signed the seizure memo as confirmed by him in his cross examination on 30.04.2024. - More than 14 years have passed since the FIR was registered, however, no Chargesheet has been filed yet causing doubts on the credibility of the investigation.
PW-4 Shabir Ahmed Khan, S.P., South Zone, Srinagar, Kashmir	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 204/1992 dated 05.12.1992, P.S. Shaheed Gunj</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - Ashiq Hassain Faktoo, the accused in the present FIR has never had any association, whatsoever with the MLJK-MA. He runs his own Association by the name 'Muslim Deeni Mahaz'. The witness had during his cross-examination on 01.05.2024 failed to draw any link between Qasim Faktoo and MLJK-MA. - Witness was not aware about the fact that Muslim League was established in 2008 and Mr. Faktoo had been in custody since 1993. <p>FIR No.74/2010 dated 27.06.2010, P.S. Shaeed Gunj</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - Complainant is a police official - Charge sheet filed after 13 years of registration of FIR causing doubts on the credibility of the investigation. [Ref: Pg. Pg 32 of the Affidavit] - 161 statements of only Police witnesses attached to the Affidavit and all are identical. - Seizure memos do not have signatures of independent witnesses. <p>FIR No. 02/2011 dated 12.01.2001, P.S. Karan Nagar</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - The FIR consists of false and vague allegations that one of the members of the association is involved in terrorist and militant activities. No evidence attached with the affidavit to prove the same. - 161 statements, both of police officials, neither mention any recovery from any members of the Association nor mention anything incriminating against them. <p>FIR No.35/2022 dated 17.03.2022, P.S. Shergari.</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - The member of the Association against whom the FIR is alleged, was in Tihar Jail during the registration of FIR. - Both the 161 statements are of police officials, and are completely identical. None of the statements was recorded by the present witness.
PW-5 Saleem Bhat, Dy. S.P. Kupwara	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since

	<p>the year 1993.</p> <p>FIR No. 174/2009 dated 13.11.2009, P.S. Kupwara</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - None of the persons mentioned in the FIR have any association, whatsoever, with MLJK-MA. - The witness identified 3 people in the FIR: Mir Saifullah, Maqsood Alam and Mehraj u din Kalwal who have no association with MLJK-MA as members of the Association.
PW-6 Abbas, SDPO, Nehru Park	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. Witness himself states in his cross-examination on 03.05.2024 that the association was formed after 2000, Qasim Faktoo has been in custody since 1993, hence no question arises about him being involved with the Association. <p>FIR No.59/2010 dated 18.10.2010, P.S. Harwan</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - Complainant is a police official. - Vague allegations of disturbing India's integrity and sovereignty, no speech attached. - Chargesheet filed 12 years after registration of FIR causing doubts on the credibility of the investigation. <i>[Ref: Pg. 14 of the Affidavit]</i>
PW-7 Brij Bhushan Pathak, Dy. S.P., NIA, New Delhi.	<ul style="list-style-type: none"> - NIA Case No. RC/10/2017/NIA/DLI where Masrat Alam has been arraigned as an accused solely based on a piece of loose sheet of paper where Rs. 10,00,000 has been mentioned against Masrat Alam. The document is not signed by Masrat Alam. - The witness during his cross examination admitted that the whole case was brought against APHC, of which he alleged Masrat Alam has been a part since 1999.
PW-8 Mayank Arora, Assistant Director, Enforcement Directorate	<ul style="list-style-type: none"> - The Affidavit pertains to allegations related to APHC and not to MLJK-MA. - The list of witnesses attached to the Affidavit are only State witnesses and no independent witnesses. - The whole charge-sheet of the case is an import from the NIA Case No.RC/10/2017/NIA/DLI where Masrat Alam has been arraigned as an accused solely based on a piece of loose sheet where Rs. 10,00,000 has mentioned against Masrat Alam. The document is not signed by Masrat Alam. - The witness has failed to attach Section 50 statement of the witness.
PW-9 Sandeep Bhat, S.P. Bandipora	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in custody since the year 1993. <p>FIR No. 26/2014 dated 19.03.2014, P.S. Bandipora</p> <ul style="list-style-type: none"> - None of the persons mentioned in the FIR has any association, whatsoever, with MLJK-MA. <i>[Ref: Pg. 21 of the Evidence Affidavit]</i> <p>FIR No. 17/2014 dated 17.03.2014, P.S. Hajjin</p> <ul style="list-style-type: none"> - None of the persons mentioned in the FIR has any association, whatsoever, with MLJK-MA. <i>[Ref: Pg. 34 of the Evidence Affidavit]</i> - The witness without any personal knowledge has wrongly affirmed in his

	<p>cross-examination on 08.05.2024 that Shaukat Ahmad Hakim and Mehraj-ud-din Gojri are members of MLJK-MA.</p> <p>FIR No. 23/2015 dated 07.10.2015, P.S. Aragon</p> <ul style="list-style-type: none"> - None of the persons mentioned in the FIR has any association, whatsoever, with MLJK-MA. <i>[Ref: Pg. 45 of the Evidence Affidavit]</i> <p>FIR No. 53/2015 dated 28.03.2015, P.S. Sumbal</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - Complainant is a police official. - FIR mentions mere allegations of anti-India speech, neither the exact contents of the speech nor the speech itself is attached to the Affidavit. - Chargesheet is filed after 6 years of registration of the FIR. <i>[Ref: Pg. 89 of the Evidence Affidavit]</i> causing doubts on the credibility of the investigation. - 164 Statements only of police officials attached.
PW-10 Saqib Ghani, Dy. S.P. Budgam Hqr.	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/ Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 92/2015 dated 15.04.2015, P.S. Budgam</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts of the case. - Witness has mentioned that there were 3000 supporters, however, he has not attached any photographs showing the same. - Complainant is a police official. - Chargesheet filed 9 years after registration of the FIR, causing doubts on the credibility of the investigation. <i>[Ref: Pg. 15 of the Evidence Affidavit]</i>. - 161 statements of only police officials attached to the Affidavit. None of the statements was recorded by the present witness. - Seizure Memo does not have signatures of any independent witnesses.
PW-11, Sarfaraz Bashir SDPO, Sopore	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/ Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR 68/2015 dated 17.04.2015, P.S. Sopore</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - It has been more than 9 years since FIR was registered, however, no chargesheet has been filed yet, causing doubts on the credibility of the investigation. - The FIR mentions mere allegations of hate speech, however neither specific contents are mentioned nor the speech has been attached to the Affidavit. <u>This fact was confirmed by the witness during his cross-examination on 09.05.2024.</u> - 161 statement is a mere reiteration of the contents of the FIR. - All the witnesses are State witnesses and no statement of Independent witness has been attached. <p>FIR 69/2020 dated 08.04.2020, P.S. Sopore</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - The present FIR prima-facie seems malafide as on 08.04.2020, the whole nation was on a lockdown due to Covid-19. - None of the members mentioned in the FIR is neither members of Association, nor is related to association in any manner.

	<ul style="list-style-type: none"> - The FIR is against LeT outfit and not MLJK-MA <i>[Ref: Pg. 56 of the Evidence Affidavit]</i> - All 161 statements are those of police officials. None of the statements is recorded by the present witness.
PW-12 Hari Prasad, SDPO, Kothibag	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 07 of 2010 dated 22.01.2010, P.S. Maisuma</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - Complainant is a police official. - The chargesheet in FIR No. 7/2010 has been filed after 6 years of filing of the FIR causing doubts on the credibility of the investigation. <i>[Ref: Pg. 21 of the Evidence Affidavit]</i> - Both the 161 statements attached to the Affidavit do not disclose a specific offence. - The chargesheet mentions mere allegations of anti-India speeches, no speech attached to the Affidavit. <p>FIR No. 12 of 2006 dated 05.05.2006, P.S. Kralkhud, Srinagar</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, i.e., prior to 2008. - Complainant is a police official. - Neither the 161 statements nor the contents of the Chargesheet mention any member of the MLJK-MA. - Jabeena Sex scandal was one of the incidents which had shook the state of Jammu and Kashmir. During his cross-examination, when the witness was asked about the same, the witness had no idea neither did he ever made any efforts to know about the same. - The Chargesheet mentions police personnels being seriously injured on account of stone pelting at the behest of persons mentioned in the FIR. However, no MLC was attached to the Affidavit. This was confirmed by the Witness during his cross-examination on 09.05.2024. <p>FIR 52 of 2010 dated 27.07.2010, P.S. Kralkhud, Srinagar</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR. - The FIR mentions that Masrat Alam Bhat is appealing to the people to participate in civil disobedience against State atrocities. <i>[Ref: Pg. 43 of the Evidence Affidavit]</i> - The chargesheet in FIR No. 52/2010 has been filed after 6 years of filing of the FIR causing doubts on the credibility of the investigation. <i>[Ref: Pg. 46 of the Evidence Affidavit]</i> - Both the 161 statements attached are of police officials. All witnesses in the present case are State witnesses <i>[Ref: Pg. 49 of the Evidence Affidavit]</i> - Seizure Memo does not mention any signature of independent witnesses. <i>[Ref: Pg. 56 of the Evidence Affidavit]</i>
PW-13 Sh. Mohd. Nawaz Khandey, Dy. S.P. Hqrs. Pulwama	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 43/2010 dated 29.01.2010, P.S. Pulwama</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present

	<p>FIR.</p> <ul style="list-style-type: none"> - Complainant is a police official in the present case. - The FIR mentions mere allegations of raising anti-India slogans, no speech attached to the Affidavit. - The chargesheet in FIR No. 43/2010 has been filed on 08.12.2023 i.e., after 13 years of filing of the FIR. <i>[Ref: Pg. 16 of the Evidence Affidavit]</i> causing doubts on the credibility of the investigation. <p>FIR No. 46/2016 dated 14.02.2016, P.S. Pulwama</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - None of the persons mentioned in the chargesheet have any association, whatsoever, with MLJK-MA. This fact was confirmed by the present witness upon his cross-examination on 09.05.2024.
Sh. PW-14 Sajad Ahmad Sheikh, S.P. Anantnag, Kashmir	<p>FIR No. 31 of 2018 dated 14.07.2018, P.S. Uttersoo</p> <ul style="list-style-type: none"> - Complainant is a police official - The witness had no personal knowledge of the facts mentioned in the present FIR. - FIR mentions mere allegations of raising anti-India Slogans. Neither the contents nor the speech itself is attached to the Affidavit, including video recording of the same. - The FIR deals with members of the Association attending processions. The witness during his cross-examination on 09.05.2024, himself attested to the fact that it is a common practice to attend funerals in Kashmir. - All 161 statements are of police officials. Nobody, apart from the police witnesses has attested to the fact that stones were pelted by members of the Association during the procession. - Chargesheet filed after 5 years of registration of FIR, causing doubts on the credibility of the investigation. <i>[Ref: Pg. 13 of the Evidence Affidavit]</i> - Seizure Memo does not have any signature of independent witnesses. <i>[Ref: Pg. 28 of the Evidence Affidavit]</i>
PW-15 Yasir Qadri, ASP, Baramulla	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/ Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 69/1999 dated 10.09.1999, P.S. Uri</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, <i>i.e.</i>, prior to 2008. - Allegations in the FIR are against persons of Hurriyat Conference and not against Muslim League. - Chargesheet filed 23 years after registration of FIR causing doubts on the credibility of the investigation. <i>[Ref: Pg. 23 of the Evidence Affidavit]</i> - Complainant is a police official. - 161 statements attached to the Affidavit are of police officials and are identical. None of the statements was recorded by the present witness. <p>FIR No. 215/2010 dated 17.09.2010, P.S. Pattan</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - Complainant is a police official.

	<ul style="list-style-type: none"> - 161 statements attached to the Affidavit are of police officials and are identical. - The seizure memo does not have any signatures of independent witnesses <p>FIR No. 137/2013 dated 09.04.2013, P.S. Baramulla</p> <ul style="list-style-type: none"> - The witness had no personal knowledge of the facts mentioned in the present FIR. - Complainant is a police witness. - Mere allegation that anti-India posters were pasted by people at the behest of Masrat Alam Bhat. However, not even a single 161 statement of any independent person has affirmed the same. - 161 statements only of police officials attached, which are identical. - Chargesheet filed 11 years after registration of FIR causing doubts on the credibility of the investigation. [Ref: Pg. 49 of the Evidence Affidavit.] <p>FIR No. 52/2017 dated 258 of 2016, P.S. Baramulla</p> <ul style="list-style-type: none"> - Complainant is a police official - The witness had no personal knowledge of the facts mentioned in the present FIR. - FIR, prima-facie is malafide as Masrat Alam Bhat was lodged in Tihar Jail during this time. - None of 161 statements of independent witness has been attached to affirm the same. - <u>161 statements mentions that huge number of mobile phones were recovered from detainees in Tihar Jail, however both the 161 statements do not reveal as to from whose possession, the said devices were recovered. This was confirmed by the witness when he was confronted with regard to this during his cross examination on 15.05.2024.</u>
PW-16 Sh. Satish Kumar, Sub-Divisional Police Officer, Handwara, Kashmir	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 140/1999 dated 08.09.1999, P/S Handwara</p> <ul style="list-style-type: none"> - The Witness had no personal knowledge of the facts mentioned in the FIR. He had joined the police force only in 2012. - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, i.e., prior to 2008. - Persons affiliated with 'Hurriyat Conference' (not the organization under challenge, i.e., MLJK-MA) have been named in the aforesaid FIR. - The FIR does not specify the contents of the alleged slogans raised by the accused persons, no speech is attached to the Affidavit. - The photograph annexed [Ref: Pg. 28 of the Evidence Affidavit] is not indicative of the persons in question, as it fails to capture the faces of the individual. The Photograph at Annexure P-6 does not mention the source and date and further, as per the evidence affidavit itself, the same does not allege any member of MLJK-MA to be in the photograph. [Ref: Para 7, Pg. 6 of the Evidence Affidavit]. The Witness during his cross-examination on 15.05.2024 failed to even specify the source of the said photograph which had no date on it. - 161 statements of only police officials are attached. None of the 161 statements was recorded by the witness. - The chargesheet in FIR No. 140/1999 has been filed in 2023 i.e., after 24 years of registration of the FIR. [Ref: Pg. 20 of the Evidence Affidavit] causing doubts on the credibility of the investigation. <p>FIR No. 141/2000 dated 01.11.2000, P/S Handwara</p> <ul style="list-style-type: none"> - Witness had no personal knowledge of the facts mentioned in the FIR.

	<ul style="list-style-type: none"> - The incident alleged in the FIR dates back to the period prior to the constitution of MLJK-MA, i.e., prior to 2008. - Persons affiliated with '<i>Hurriyat Conference</i>' (not the organization under challenge, i.e., MLJK-MA) have been named in the aforesaid FIR. - The FIR does not specify the contents of the alleged slogans raised by the accused persons. No speech attached to the Affidavit. - 161 statements of only police officials are attached. None of the 161 statements was recorded by the witness. - The chargesheet in FIR No. 141/1999 has been filed on 09.12.2022, i.e., after 23 years of filing of the FIR, causing doubts on the credibility of the investigation. [Ref: Pg. 36 of the Evidence Affidavit]
PW-17 Mohd. Saleem Bhat, Deputy Superintendent of Police, Kralgund	<ul style="list-style-type: none"> - The Evidence Affidavit incorrectly enlists members of MLJK-MA. Amir/Patron Mohd. Qasim Faktoo @ Dr. Ashiq Hussain Faktoo has never been associated with the MLJK-MA, in fact, he runs his own organization named 'Muslim Deeni Mahaz'. Further, Qasim Faktoo has been in near custody since the year 1993. <p>FIR No. 52/2010 dated 28.06.2010, P.S. Kralgund</p> <ul style="list-style-type: none"> - The Witness had no personal knowledge of the facts mentioned in the FIR. - The FIR does not mention the name of the persons and categorically states that the call was given by the '<i>Hurriyat activist</i>' and does not relate to MLJK-MA. [Ref: Pg. 15 of the Evidence Affidavit]. - None of the persons mentioned in the Chargesheet has no association, whatsoever, with MLJK-MA. <p>FIR No. 30/2015 dated 16.04.2015, P.S. Kralgund</p> <ul style="list-style-type: none"> - Complainant is a police official - Witness had no personal knowledge of the facts mentioned in the FIR. None of the 161 statements was recorded by him. - Chargesheet filed on 01.12.2022, 7 years after registration of the FIR causing doubts on the credibility of the investigation. [Ref: Pg 28 of the Affidavit] - 161 statements of only police officials attached. None of the 161 statements was recorded by the witness.
PW-19, Rajesh Kumar Gupta, Director, Counter Terrorism, MHA	<ul style="list-style-type: none"> - The witness had no personal knowledge of any facts mentioned in the background note, based on which the Ministry of Home Affairs declared MLJK-MA to be an unlawful Association.

199. After pointing out the discrepancies in the statements and cross-examinations of the witnesses, Ms. Farasat submitted that upon examination of the same, broadly the following issues emerge with the evidence led by the Central Government:

A. The entire evidence is based on hearsay and lacks personal knowledge

200. Learned counsel for the association submitted that the entirety of evidence led by the Central Government is based on the affidavits of the "*Supervisory Officers*" who had not conducted the investigations themselves and, in fact, a few of them were not even members of the J&K Police Forces when the alleged incidents had occurred. She further submitted that none of these officers had recorded the statements made under Section 161 or 164 of the Cr.P.C. Therefore, the evidence affidavits led by the Central Government are not only inadmissible on account of being hearsay, but also fail to meet the "*Personal Knowledge*" test as laid down by the Supreme Court in the decision of *Jamaat-e-Islami Hind* (supra).

B. No-chargesheet filed or inordinate delay in filing of the chargesheets

201. On this point, learned counsel for the association submitted that with respect to certain FIRs that have been brought on record by the Central Government, there has either been an inordinate delay in filing of the chargesheets or, in certain cases, no chargesheet has been filed at all. In these cases, FIRs were registered 10 to 17 years ago and that the Central Government has shirked off its responsibility of timely filing of the chargesheets by attributing the delay in filing of the same to the disruption in the Kashmir valley on account of non-state actors. Such assertion of the Central Government is devoid of any documentary proof or evidentiary record. In the absence of the same, it was submitted that the delay in filing of the chargesheet was merely an attempt by the Central Government to prolong cases against the accused persons so as to keep them under threat and fear of being in judicial custody.

202. She next submitted that the delay in investigation is violative of Article 21 of the Constitution of India (*Right to Speedy Trial*) and on this ground alone, such FIRs and the incidents alleged therein (without getting into the merits of the same) must not be considered. She referred to the Supreme Court judgment in *Pankaj Kumar vs. State of Maharashtra*, (2008) 16 SCC 117, wherein, the Supreme Court has held as under:-

“27. *Be that as it may, the prosecution has failed to show any exceptional circumstance, which could possibly be taken into consideration for condoning the prolongation of investigation and the trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is manifestly clear.*”

203. Thus, on the basis of the above facts, Ms. Farasat submitted that the Masarat Alam has been denied his valuable constitutional right to a speedy investigation and trial and, therefore, criminal proceedings initiated against him in the year 1987 and pending in the Court of the Special Judge, Latur, deserve to be quashed on this short ground alone.

C. The alleged incidents have been prior to the Constitution of MLJK-MA

204. About the timing of the incidents, learned counsel for the association submitted that in several FIRs, the incidents alleged have been prior to the constitution of MLJK-MA in 2008 and that such incidents have allegedly been at the behest of members of All Parties Hurriyat Conference (“APHC”). APHC is a conglomerate of several associations each with its objectives and *modus operandi*. MLJK-MA from the time it assumed a distinct identity as an association in its own name, forms an entirely separate entity from APHC. Therefore, any incidents being alleged to APHC cannot be attributed to MLJK-MA.

D. The incidents alleged could not have been attributed to members of MLJK-MA

205. Learned counsel submitted that there have been a number of incidents in the FIRs which have been alleged to the Chairman of MLJK-MA, Mr. Masarat Alam. However, such incidents could not have been attributed to the Chairman simply because Mr. Masarat Alam was under incarceration during the said period when most of these incidents are alleged to have taken place. The incarceration record of Mr. Masarat Alam shows that over the course of 30 years, there have been 38 detention orders against him. As such, Mr. Masarat Alam has been in prison in near continuous custody for the past 20 years. Further, Dr. Qasim Faktoo has wrongly been alleged as a member of MLJK-MA in nearly all the evidence affidavits tendered by the Central Government. Not only is Dr. Qasim Faktoo known for running his own association by the name of “Muslim Deeni Mahaz” in Kashmir Valley but he has also been in near continuous detention since the year 1993. Further, in certain other FIRs as well, the incidents have been alleged against individuals who are not members of MLJK-MA.

E. Inherent bias exhibited in the evidence on record

206. Ms. Farasat submitted that in the FIRs submitted with each of the evidence affidavits, the fact that emerges is that all the FIRs have been lodged at the instance of the state officers. Further, in investigation relating to most of these FIRs, no independent witnesses have come forward, and only testimonies of the officers have been recorded. Therefore, according to her, the entire process of criminal prosecution against the accused persons has been initiated by the state, witnessed by the state, investigated by the state, and later testified before the Tribunal by the state itself (by different set of officers). She, therefore, submitted that the same leaves more than enough room for the state bias as against the accused persons.

III. Alleged incidents do not amount to “unlawful activities” within the meaning of section 2(1)(o) of the UAPA

207. Learned counsel for the association submitted that Section 2(1)(o) of the UAPA under which the MLJK-MA has been proscribed defines “*unlawful activity*” in relation to an individual member or an association and that the said Section provides that if an individual or an association takes any “*action*” to secure the secession of a part of territory of India from the Union, then it would amount to an unlawful activity. She contended that a simple reading of the Section 2(1)(o) of the UAPA makes it clear that the key qualifier for this Section is indulging in any overt act or taking an action in support of secession. According to the Section, the “*action*” can be accomplished by committing an act or by words either spoken or written or by signs or by visible representation or otherwise. She submitted that by invoking the rule of *ejusdem generis* in interpreting this clause, the term “*otherwise*” will have to fall within the same category as previous qualifiers mentioned in the Section.

208. She next contended that upon appraising the material brought on record against the Association (detailed cross-examination of the witnesses of the Government and the discrepancies pointed out therein), the conclusion that can be drawn is that the materials do not satisfy the tests laid down for commission of an “*unlawful activity*” under the said Section and that the incidents referred to in the FIRs are based on sweeping statements and bald allegations. For instance, most FIRs have failed to prove that, in the first instance, no speeches or processions were led or conducted by the members of MLJK-MA. Further, she pointed out that the FIRs do not also mention the specific slogans that would tantamount to promoting secessionism as defined in Section 2(i) of the UAPA. While Section 2(i) is an inclusive definition and not an exhaustive one, it still requires that specific slogans or words either spoken or written be made available to the Tribunal that would amount to secession. She next placed reliance on the Supreme Court decision in the case of *Sukhchain Singh & Ors. vs. State of Rajasthan*, (2000) 2 SCC 183, wherein the Supreme Court, while considering the meaning of “*disruptive activity*” under Terrorist and Disruptive Activities (Prevention) Act, 1987, held the requirement of strong positive evidence in support of secession allegations. The relevant paragraphs have been reproduced hereunder:

“7. The next aspect to be considered is, would the appellants have committed any “*disruptive activity*” falling within the purview of Section 4 of TADA? The expression “*disruptive activity*” has been defined in Section 4(2) of TADA. Such activity should involve questioning or disrupting the sovereignty and territorial integrity of India or an activity intended towards the cession or secession of any part of India from the Union.

8. Shri Sushil Kumar Jain contended that as the wall posters contained the slogan “Khalistan Zindabad” an intention to question the sovereignty and territorial integrity of India could be presumed. Unfortunately, the prosecution has not led any evidence to show what is meant by the word “Khalistan” used in the wall posters. Could it have been a State within the Indian Union, or just a movement for that purpose or something more than that. Due to total paucity of evidence in that regard it is not possible to assume that the word is aimed unmistakably at creation of a separate country.

9. Learned Counsel made an endeavour to show that some other persons had, at some other point of time, tried to project that "Khalistan" as a new nation to be carved out of India. We are not disposed to reach any rash conclusion on such surmises or on the strength of some babbling made by some irresponsible person at some other point of time. Until the word "Khalistan" used in the questioned wall posters is proved to be of that connotation, we are not prepared to read it into that expression. The prosecution should have adduced positive evidence at least to establish that what is meant by the word "Khalistan" in the wall posters was a disruptions slogan. The prosecution has not even attempted to do so."

209. She further submitted that no posters with secessionist message alongwith a logo or specific identifier of the Association or any of its members is attached to the affidavits filed by the police officers. The same is also the case with regard to the photographs that have been attached, as the same have very limited features. Again referring to the Supreme Court decision in *Jamaat-e-Islami Hind* (supra), she submitted that if a particular provision requires certain elements to be fulfilled, which in this case, has to be either through an action or through specific words either spoken or written or specific written signs, then vague and unsubstantiated opinions of police officers in affidavits filed without any personal knowledge of the incidents so alleged will fail the test of objective determination by the Tribunal.

210. In view of the aforesaid facts and circumstances, she submitted that the Notification No. S.O.5462(E) dated 27.12.2023, issued by the Central Government declaring MLJK-MA as an unlawful association is liable to be set aside as there is no sufficient evidence/cause on record justifying the ban on MLJK-MA.

ADDITIONAL WRITTEN SUBMISSIONS ON BEHALF OF THE ASSOCIATION MLJK-MA

(I) Seeking a Plebiscite does not amount to "Unlawful Activity"

211. It was submitted on behalf of the association that MLJK-MA in the Reply to the Background Note has stated that the core mission of MLJK-MA has *inter-alia* revolved around implementing the resolution passed on 05.01.1949 by the United Nations Commission for India and Pakistan (UNCIP), which required a plebiscite to determine the accession of the State of Jammu and Kashmir ("J&K") to either India or Pakistan and that the Central Government has relied upon this admission of the Association to argue that the MLJK-MA has for its object an "*unlawful activity*", therefore, MLJK-MA is an "*unlawful association*".

212. It was submitted that seeking of a plebiscite does not amount to an "*unlawful activity*" within the meaning of Section 2(1)(o) of the UAPA and the same can be understood in terms of: (a) statutory scheme of the UAPA; (b) legal genesis of the demand for plebiscite; and (c) India's obligations under International Law. These are elaborated as under:-

(a) Statutory Scheme of the UAPA

213. It was submitted that section 2(1)(o) of the UAPA provides that if association takes any "*action*" to secure the secession of a part of territory of India from the Union, then it would amount to an unlawful activity. A simple reading of the Section 2(1)(o) of the UAPA makes it clear that the key qualifier for this Section is indulging in any overt act or taking an action in support of secession and Section 2(1)(o) was referred to, which reads as under:-

"2(1)(o) "unlawful activity, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise)

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

- (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or
- (iii) which causes or is intended to cause disaffection against India; ”

214. It was submitted that according to the Section, the “*action*” can be accomplished by committing an act or by words either spoken or written or by signs or by visible representation or otherwise and that by invoking the rule of *ejusdem generis* in interpreting this clause, the term “*otherwise*” will have to fall within the same category as previous qualifiers mentioned in the Section. Therefore, according the counsel for the association, mere seeking of a plebiscite as an objective of the Association, does not satisfy the requirement of “*action*” within the meaning of Section 2(1)(o) of the UAPA.

(b) Legal genesis of demand for plebiscite in J&K

215. It was submitted that the demand for seeking a plebiscite in J&K holds a legal sanction, which cannot be retrospectively, by way of the rigours of the UAPA be deemed unlawful. India first took over the dispute in Kashmir Valley to the United Nations (“UN”) on 01.01.1948, and thereafter, UN endeavored to mediate the dispute between India and Pakistan. The United Nations has time and again recognized that “*both India and Pakistan desire that the question of accession of Jammu and Kashmir to India or Pakistan should be decided through democratic method of a free and impartial plebiscite*” [Ref: Resolution adopted at the meeting of United Nations Commission for India and Pakistan on 05.01.1949, Document No.5/1196] and affirmed “*self-determination*” as the governing principle for settlement of the Kashmir dispute.

216. It submitted that the sentiments that were echoing in the Kashmir Valley with respect to a plebiscite, including by MLJK-MA, had a legal basis stemming out of UN resolutions, with the initiation, consent and participation of the Indian Government and that there have been legally permissible political parties/organizations (such as All Jammu and Kashmir Plebiscite Front) that have been advocating for the cause of plebiscite in J&K. It was submitted that some of the celebrated leaders such as Jawaharlal Nehru, Jayaprakash Narayan and C.R. Rajagopalachari had also advocated for the right of self-determination of people in Kashmir. Some of the excerpts from their speeches were also referred to, which are as under.

217. Jayaprakash Narayan, the great Indian leader had written in an article in the Hindustan Times dated 20 April 1964 titled: ‘Our Great Opportunity in Kashmir’, which reads as under:-

“Jayaprakash Narayan had said “I may be lacking in patriotism and other virtues, but it has always seemed to me to be a lie to say that the people of Kashmir had already decided to integrate themselves with India... Lastly, if we are so sure of the verdict of the people, why are we so opposed to give them another opportunity to reiterate it? The answer given is that it would start the process of disintegration of the country. Few things have been said in the course of this controversy more silly than this one. The assumption behind the argument is that the states of India are held together by force and not by the sentiment of common nationality. It is an assumption that makes a mockery of the Indian nation and a tyrant of the Indian state.”

“In fact Jawahar Lal Nehru had stated in a broadcast on 2 November 1947 that: “We have declared that the fate of Kashmir is ultimately to be decided by the people. That pledge, we have given, and the Maharaja, had supported it, only to the people of Kashmir but to the world. We will not, and cannot, back out of it. We are prepared when peace and law order have been established to have established to have a referendum held under international auspices like the UN. We want it to be fair and just reference to the people and we shall accept their verdict. I can imagine no fairer and juster offer.” (page 2017, A.G. Noorani, The Kashmir Dispute 1947-2012)

218. Ms. Farasat submitted that even the Supreme Court of India in **In Re: Article 370 of Constitution of India**, examined the historical context for demands for plebiscite in J&K and observed that even the makers of the

Constitution of India including the outgoing Governor General suggested a plebiscite. Some of the excerpts were also referred to as under:-

"V.P. Menon

259. V P Menon provides a detailed account of the events preceding the accession of Jammu and Kashmir to the Union of India in his book titled, "The Story of the Integration of the Indian States". Menon's account is illuminating on the events which took place from 22 October 1947 and needs to be extracted in the entirety:

"... We left Srinagar in the first light of the morning of 26 October and immediately on my arrival in Delhi I went straight to a meeting of the Defence Committee. I reported my impressions of the situation and pointed out the supreme necessity of saving Kashmir from the raiders. Lord Mountbatten said that it would be improper to move Indian troops into what was at the moment an independent country, as Kashmir had not yet decided to accede to either India or Pakistan. If it were true that the Maharajah was now anxious to accede to India, then Jammu and Kashmir would become part of Indian territory. This was the only basis on which Indian troops could be sent to the rescue of the State from further pillaging by the aggressors. He further expressed the strong opinion that, in view of the composition of the population, accession should be conditional on the will of the people being ascertained by a plebiscite after the raiders had been driven out of the State and law and order had been restored. This was readily agreed to by Nehru and other ministers.

"....With the Instrument of Accession and the Maharajah's letter I flew back at once to Delhi. Sardar was waiting at the aerodrome and we both went straight to a meeting of the Defence Committee which was arranged for that evening. There was a long discussion, at the end of which it was decided that the accession of Jammu and Kashmir should be accepted, subject to the proviso that a plebiscite would be held in the State when the law and order situation allowed. It was further decided that an infantry battalion should be flown to Srinagar the next day. This decision had the fullest support of Sheikh Abdullah, who was in Delhi at that time and who had been pressing the Government of India on behalf of the All-Jammu and Kashmir National Conference for immediate help to be sent to the State to resist the tribal invasion..."

N. Gopalaswami Ayyangar

280. Besides the situation in Jammu and Kashmir, Ayyangar also referred to the commitment made by the Government of India to the people of Kashmir "in certain respects" in terms of which "an opportunity would be given to the people of the State to decide for themselves whether they will remain with the Republic or wish to go out of it". Ayyangar also stated that the Government was committed to ascertaining the will of the people "by means of a plebiscite provided that peaceful and normal conditions are restored and the impartiality of the plebiscite could be guaranteed". Moreover, he stated that the will of the people "through the instrument of a constituent assembly" will determine the Constitution of the State as well as the sphere of Union jurisdiction over the State. Ayyangar clearly spelt out that unlike other states which had accepted the Constitution framed for states in Part I of the new Constitution; where the Centre would have power to make laws on all Union and Concurrent subjects and a uniformity of relationship had been established between the States and the Centre, the situation as it obtained in Jammu and Kashmir was different"

Lord Mountbatten

565. On 22.10.1947, with the onset of winter, several Pathan tribesmen, led unofficially by the Pakistani Army, invaded Kashmir and rapidly pushed towards Srinagar. The Maharaja's army proved no match for the invading forces. The Maharaja was left with little option but to appeal to India for military assistance, but India awaited a formal accession, in the spirit of true democratic principles. Finally, on 26.10.1947, the Maharaja acceded to India and agreed to install Shri Sheikh Abdullah as the head of the state administration. Lord Mountbatten accepted the accession, with the caveat that there would be a plebiscite to ratify the accession. The Indian troops, thus, moved in and saved the day. Nehru's words addressed to his sister capture it well, "Srinagar might have been a smoking ruin. We got there in the nick of time."

219. After referring to the above extracts, it was submitted that seeking a demand for a legitimate objective, which the Indian Government had agreed to, the celebrated leaders were also advocating for and which had a rightful basis under law, cannot be considered as a threat to India's territoriality or sovereignty, and does not in itself amounts to bringing about secession of a part of any territory of India from the Union.

220. It was further submitted that the idea of the plebiscite was to reflect the will of the people, and resolve the Kashmir dispute once and for all for overall peace and harmony in J&K and that the result of the plebiscite could have also been very well in India's favour. When the outcome of the plebiscite was indeterminable, the demand for seeking the same does not qualify the ingredients of Section 2(1)(o) of the UAPA. Therefore, it was submitted that while interpreting an extraordinary criminal statute such as the UAPA with grave criminal consequences, certainty of event and an active action in pursuance of the same must be read into understanding secessionism.

(c) India's obligations under International Law

221. It was submitted that India is under a Constitutional obligation to protect rights of its people by taking appropriate measures under Article 51(c) of the Constitution of India which mandates India to foster respect for international treaties and customary law obligations and the Supreme Court in many cases directed that actions of States must be in conformity with international law, customs or covenants. Reference was also made to *Gramophone Company of India vs. Birendra Bahadur Pandey & Others*, 1984 SCC (2) 534, in particular para 5 thereof and *Vishaka & Ors. vs. State of Rajasthan*, (1997) 6 SCC 241 with particular reference to para 6.

222. It was then submitted that under the international law, people have the right to self-determination and the same has acquired the status of *jus cogens* norm, *i.e.*, peremptory norm of international law from which no derogation by any State is permitted and that the right to self-determination is a bouquet of rights, *i.e.*, by virtue of this right, people freely determine their political status and freely pursue their economic, social and cultural development. [Ref: Article 1, *International Covenant on Civil and Political Rights*]. It was, therefore, submitted that the demand for plebiscite was an assertion of the right to self-determination, and the same cannot be considered an unlawful activity and that such a right was also simply a starting point for a host of other political rights and demands in J&K.

(II) Activities of one member are not sufficient for proscribing an association

223. It was submitted that Section 2(1)(p) of the UAPA defines “*unlawful association*” in relation to members, and not in relation to activities of one specific member of the association and that the same is also clear from the definition of the term “*association*” which is used to indicate a “*collection or organization of persons who have joined together for a certain or common object*”. [Ref: Brian A. Garner, editor in Chief, *Black's Law Dictionary*. St. Paul, MN: Thomson Reuters, 6th edition, pg. 121]. Therefore, it was submitted that the requirement for a certain number of individuals is inherent to being an association. It was submitted that relevant section is Section 2(1)(p) which reads as under:-

“2(1)(p)*unlawful association means any association:*

(i) *which has for its object any unlawful activity, or which encourages or aids persons to undertake any unlawful activity, or of which the members undertake such activity;* or

(ii) *which has for its object any activity which is punishable under section 153A (45 of 1860) or section 153B of the Indian Penal Code, or which encourages or aids persons to undertake any such activity, or of which the members undertake any such activity:*

Provided that nothing contained in sub-clause (ii) shall apply to the State of Jammu and Kashmir”

224. By referring to the above provision, it was submitted that the scheme of the UAPA is that it envisages the “*unlawful activity*” to be undertaken by at least a significant number of individuals of the association and not simply by one person and that the legislative intent can be gauged with reference to the Unlawful Activities (Prevention) Amendment Act, 2019 that provides for designating an individual as terrorist. As such, the UAPA recognizes and marks the difference between an association and an individual being proscribed.

225. It was submitted that in the present case, the Central Government has focused on the activities of the Chairman of the Association, Mr. Masarat Alam Bhat, who has been in near continuous detention since 1993. Whereas para 7 of the Reply to the Background Note filed by MLJK-MA clearly articulates that MLJK-MA had cadres in every district of Kashmir. In Central Government's own submissions in the Background Note, they have provided a list of members in para-3, however, they have failed to discuss/substantiate on the alleged culpability of the other members and, therefore, the requirement of Section 2(1)(p) of the UAPA regarding activities of certain members being required for declaration of the association to be unlawful are not met.

(iii) **Speeches by the Chairman do not amount to secession**

226. It was submitted on behalf of the association that the speeches by Mr. Masarat Alam Bhat do not amount to secession within the meaning of Section 2(1)(o)(i) of the UAPA and that taking the speeches at their highest, the same amount to mere sloganeering. The decision of the Supreme Court in *Balwant Singh & Anr. vs. State of Punjab*, (1995) 3 SCC 214 was also referred, wherein it was held that speeches which do not result in any overt act, as in the present case, do not even meet the threshold of sedition, which is at a much lower threshold compared to secession. It was further submitted that the speeches used have to be established to have a certain "disruptive" connotation, and the same has not been established in the present case, as the speeches were either in furthering the objectives of the Association with respect to holding a plebiscite or condemning the human rights violations in J&K. The Supreme Court decision in *Sukhchain Singh & Ors. vs. State of Rajasthan*, (2000) 2 SCC 183 was also referred to wherein the Supreme Court held as under:-

"7. The next aspect to be considered is, would the appellants have committed any "disruptive activity" falling within the purview of Section 4 of TADA? The expression "disruptive activity" has been defined in Section 4(2) of TADA. Such activity should involve questioning or disrupting the sovereignty and territorial integrity of India or an activity intended towards the cession or secession of any part of India from the Union.

8. Shri Sushil Kumar Jain contended that as the wall posters contained the slogan "Khalistan Zindabad" an intention to question the sovereignty and territorial integrity of India could be presumed. Unfortunately, the prosecution has not led any evidence to show what is meant by the word "Khalistan" used in the wall posters. Could it have been a State within the Indian Union, or just a movement for that purpose or something more than that. Due to total paucity of evidence in that regard it is not possible to assume that the word is aimed unmistakably at creation of a separate country.

9. Learned Counsel made an endeavour to show that some other persons had, at some other point of time, tried to project that "Khalistan" as a new nation to be carved out of India. We are not disposed to reach any rash conclusion on such surmises or on the strength of some babbling made by some irresponsible person at some other point of time. Until the word "Khalistan" used in the questioned wall posters is proved to be of that connotation, we are not prepared to read it into that expression. The prosecution should have adduced positive evidence at least to establish that what is meant by the word "Khalistan" in the wall posters was a disruptions slogan. The prosecution has not even attempted to do so."

227. Further, it was submitted that the violence in Kashmir on behalf of state actors cannot be denied and any condemnation regarding the same cannot be held unlawful. The concurring opinion of Justice S. Kaul was also referred to in the 5 judge Constitution bench matter titled *In Re: Article 370 of Constitution of India* (supra) and it was submitted that Mr. Masarat Alam cannot be targeted on account of being a critical dissenting voice of human rights violations in J&K by security forces.

X. SUBMISSIONS ON BEHALF OF THE UNION OF INDIA

228. Ms. Aishwarya Bhati, Additional Solicitor General of India, appearing on behalf of the Central Government, submitted, at the outset, that the ban imposed by the central government on the instant proscribed association, *i.e.*, MLJK (Masarat Alam Faction) is liable to be confirmed for the following reasons:-

- (i) The assertions and allegation made by the central government in the ‘Background Note’ submitted before this Hon’ble Tribunal; the material adduced in support of the said “Background Note” has remained uncontested and has not been disproved by the proscribed association;
- (ii) Instead of contesting and disproving the allegations mentioned in the background note, the proscribed association in its reply dated 24.04.2024 has expressly admitted that the aim and objective of the association is to seek '**right of self-determination**' for the territory of Kashmir through a plebiscite to determine whether Kashmir should become independent state or remain with Indian state or merge with Pakistani state; advocating “right of self-determination” is nothing but camouflage and a facade to advocating secessionism and cessation of part of the territory of Union of India;
- (iii) The proscribed association in its response to the express charge of indulging into secessionist activities has not made any positive assertion or statement and has not expressly declared that the proscribed association, *i.e.*, MLJK or its members and office bearers Honour the Constitution of India, do not advocate separation of territory of Kashmir from the Union of India or merger of territory of Kashmir with Pakistan or declaration of it as an Independent State;
- (iv) There was overwhelming evidence/material with the central government at the time of declaring MLJK as proscribed association under the provisions of UAPA;
- (v) The factum of existence and relevancy of the material on the basis of which central government had declared MLJK as a proscribed association has not been disproved, repelled or contested by the proscribed association;
- (vi) The afore-referred material which was available with the central government has been duly adduced before this Hon’ble Tribunal, on oath;
- (vii) The authenticity, veracity, existence and relevancy of the afore-referred material, which is nature of FIRs registered against the members and office bearers of the proscribed association for indulging in secessionist activities in the territory of Kashmir, has been duly testified on oath by the respective competent officers of the various investigating agencies;
- (viii) The proscribed association has not been able to disprove the authenticity, veracity, existence and relevancy of respective FIRs which has been relied upon by the Central Government to ban MLJK-MA under the provisions of UAPA;
- (ix) Ample and abundance opportunity was given by this Hon’ble Tribunal to the proscribed association to adduce evidence in its favour to prove that MLJK-MA has not been indulging into secessionist or cessationist activities. However, the proscribed association has failed to avail the said opportunity;
- (x) No material or evidence has been adduced by the proscribed association before this Hon’ble Tribunal in support of non-confirmation of ban which can be said to outweigh the

- material/evidence adduced by the Central Government manifesting sufficient cause to declare MLJK-MA as an “Unlawful Association”;
- (xi) In fact, no cause has been shown by the proscribed association or its members or office bearers as per section 4(3) of UAPA which can be legally adjudicated to decide that there was no sufficient cause for declaring MLJK-MA as an unlawful association. The only material adduced by the proscribed association in its favour is the affidavit of its chairman Masarat Alam, which also advocates secessionism in the name of right of self-determination;
 - (xii) The opportunity to lead material has been misused by the proscribed association. The proscribed association has instead used the said opportunity given by this Hon’ble Tribunal to impede the present proceedings by orally setting up a fictitious case of illegal detention of its witnesses. The said fictitious allegation was levelled for the sole purpose of setting up a case that State administration through illegal means have restrained and deterred its witnesses from deposing before this Tribunal;
 - (xiii) The conduct of the proscribed association, in general as well as before this Tribunal, demands depreciation and a very serious adverse inference to be drawn against it. The association in its affidavit in reply has, without any evidence, levelled allegation of “*serious human rights violations in J&K by security forces against the civilians Kashmiri population, including enforced disappearance, custodial torture, fake encounters and sexual violence*” [See para 6]. The proscribed association did not stop there but in furtherance of setting up its false narrative to malign the State administration has tried to set up a false and fictitious case of illegal detention of its witness without adducing any document, affidavit or material in support thereof just to impede the present proceedings.

229. Learned ASG, therefore, argued that for the aforesaid reasons and grounds, the ban imposed on the instant association i.e. MLJK-MA is liable to be confirmed. Besides above, she founded her arguments on the following points:-

(I) Express Admission of indulgence into secessionist activities by the proscribed organization in its reply dated 24.04.2024

230. Ms. Bhati submitted that from a mere perusal of the reply to the Background Note filed by the Proscribed Organization, it is clear that the Proscribed Organization has clearly admitted that they are indulging into secessionist activities and have secessionist ideology. It is submitted that para 5 & 6 of the Affidavit clearly provides that the aim of the proscribed association has been to ensure secession of territory of Jammu & Kashmir from India by relying on the Resolution dated 05.01.1949 passed by United Nations Commission for India and Pakistan, which clearly reveals that the aim and object of the proscribed organization has been to advocate plebiscite in the State of Jammu & Kashmir to determine the secession of territory of Jammu & Kashmir and its merger with Pakistan.

231. It is clear that had the intention of Organization was to bring political reform in the territory of Jammu & Kashmir while it being a part of India, it would not have advocated plebiscite as per UNCIP. Since the territory of J&K is integral part of India as per Article 1 read with Schedule I of Indian Constitution, the only natural corollary of demand of plebiscite is to have secession of territory of Jammu & Kashmir from India through plebiscite so that it can merge with Pakistan. It is stated that the proscribed Organization has clearly admitted that the Organization’s endeavor has been dedicated to advance the cause of self-determination, i.e., to ensure that State of Jammu & Kashmir merges with Pakistan through the route of plebiscite and has been operating with that intention. The same is further corroborated by the averments made in the supplementary chargesheet filed by the NIA @ para

17.5 (pages 247-250) of NIA witness, which clearly mentions the speeches and slogans made by Masrat Alam advocating merger of territory of Kashmir with Pakistan.

232. It was further submitted by the Learned ASG that admission on behalf of the proscribed Organization is clear from the fact that though they have filed a reply which runs into 17 pages, there has been no positive assertion that the proscribed Organization honours the Constitution of India and that they do not believe in any kind of secessionist activity and/or secession of State of Jammu & Kashmir from India or they do not believe that the territory of Jammu & Kashmir should merge with Pakistan. She submitted that in the absence of any positive assertion by the proscribed organization, it is clear that instead of showing a cause in support of non-confirmation of ban, it has admitted to the grounds on which ban has been imposed.

(II) A formal denial is no denial in the eyes of law – much less it does not prove to the contrary:-

233. The learned ASG submitted that mere denial of the assertions made in the background note do not qualify as a positive statement being made on behalf of the Organization that they believe in Constitution of India and do not want secession of territory of Jammu & Kashmir for the purpose of merging it with Pakistan. She further submitted that from a mere perusal of the affidavit filed by the Proscribed Organization, it becomes clear that there is a bare denial of various facts and allegations stated in the Background Note and bare assertions that the opinion formed by the Central Government in proscribing the said organization was not made *bona fide* or is not in accordance with law or is not made out. It is submitted that such a bare denial is no disproof of the specific allegations made against the proscribed Organization in the background note which is duly corroborated by the evidence adduced by the Central Government and various investigating agencies in their testimonies. She submitted that in view of the above and as per the settled law, the allegations, therefore, remain unanswered and have to be accepted in absence of any cogent reply thereto. To support her argument in this regard, she placed reliance on the judgment of the Supreme Court in the case of *Mintu Bhakta vs. State of W.B.*, (1973) 4 SCC 85, wherein it has been unequivocally held as under:-

“8. *The only answer to such a specific plea in the Government's counter-affidavit was a bare denial of "various facts and allegations stated by the petitioner in his writ petition", and an equally bare assertion that the impugned order was made bona fide and in accordance with law. Such a vague answer is neither a proper nor an adequate reply in disproof of the specific allegation made twice by the petitioner."*

234. In the light of the aforesaid, it is was submitted by Ms.Bhati that the facts, grounds and allegations stated in the background note and the notification declaring MLJK-MA as an unlawful association have, therefore, remain unanswered and must consequently be accepted in the absence of any cogent reply thereto.

235. In view of the aforesaid, it was submitted by the learned ASG that the reply of the proscribed organization which does not dispute its' indulgence into secessionist activities, does not make any positive assertion that they believe in the Constitution of India and do not want secession of the territory of Jammu & Kashmir from Union of India and that they do not accede to or intend to accept the sovereignty and merger of the territory of Jammu & Kashmir with Pakistan and that the facts and allegations made in the background note are required to be accepted as uncontroverted and on this ground only, the ban against the proscribed organization is liable to be confirmed.

(III) Limited remit of following the procedure of examination and cross-examination of the witnesses in the proceedings before this Tribunal:-

236. It was submitted on behalf of the Central Government that the procedure of examination and cross-examination of the witness(s) for the purpose of the present Tribunal is limited only to adduce the documents before

this Hon'ble Tribunal as relevant documents and that the examination-in-chief is done to put the documents on oath forming part of the record which the Central Government referred to while banning the organization, such as the F.I.Rs which are registered against the proscribed organization and the entire record of the said F.I.Rs which includes the statements, the charge sheets, charge orders and order granting convictions, as the case may be and that the same have been adduced before this Hon'ble Tribunal to establish the relevancy of the material which was before the Central Government before the decision to proscribe the organization was taken.

237. It was further submitted by Ms. Bhati that the said exercise is in the nature of and akin to 'admission and denial' of the documents adduced/referred to by the Central Government while banning a particular organization. The contents of the said documents cannot be disputed before this Tribunal as the forum to do the same is either competent court trying the said FIRs or the Constitutional courts where quashing of said FIRs is sought for.

238. It was submitted that the examinations-in-chief do not have any other purpose, than to, place on record of this Tribunal the criminal cases relied upon by the Central Government before banning the Organization which are referred to in the background note placed before this Tribunal under Rule 5(ii) of UAP Rules. Similarly, the purpose of cross-examination is only to give a right to the members of the Proscribed Organization an opportunity to prove that the documents which were placed before the Central Government as relevant material for the purpose of declaring the proscribed Organization/Organization were either not relevant, unconnected with the cause in issue or were alien to the cause in issue. In essence, the right to cross examination of the witness is to afford an opportunity to the proscribed organization that the said document cannot be treated as sufficient cause for the purpose of declaring the organization as unlawful. Opportunity is also granted to the members of the proscribed organization to prove during cross-examination that no such document exists which was relied upon by the Central Government at the time of banning the said Organization. Thus, it was submitted that the purpose of examination-in-chief and cross-examination is limited to ascertain the authenticity of the document and the relevancy of the same. Beyond that there is no right which is vested with any party to prove the same in examination or in cross-examination.

239. It was therefore, submitted on behalf of the Central Government that once the document is proved to be a part of record of a particular F.I.R., the contents of the same cannot be disputed before this Tribunal. The said right is given to the accused to be exercised before the competent criminal court before which the trial of the said F.I.R. is pending. Insofar as the present Tribunal is concerned, the said document is adduced only to put it on record that there was material which was relevant and could have been relied upon by the Central Government at the time of taking the decision to proscribe an organization.

240. In this view of the matter, it was submitted by Ms. Bhati that the contention of the proscribed organization that Section 161 Cr.P.C. statements which are adduced along with the respective F.I.Rs are hearsay evidence and the maker of said statements under Section 161 Cr.P.C. not being before this Tribunal to prove the said document pales into insignificance because this Tribunal is not constituted to hold a merit review of the contents of the said documents but is given the jurisdiction only to see and ascertain as to whether such documents exist or such documents are relevant for the purpose of declaring the organization as a banned Organization, i.e., whether such documents constitute as sufficient cause to ban a particular organization and that for the purpose of determining sufficient cause, the material has to be looked into, which justifies indulgence of a particular organization in unlawful activities. The said material, apart from intelligence reports, can only be criminal cases registered against the said organization by the respective investigating agencies under section 13 of UAPA or 153A and 153 B in the form of FIRs.

241. Therefore, it was submitted that it is the record of the FIRs which have to be looked into by this Tribunal to satisfy its conscience in respect of its relevancy that it forms and constitutes as sufficient cause for declaring an organization as unlawful organization. In fact, the law mandates that to ascertain sufficient cause, the entire record of

the FIR which has been relied upon by the Central Government in its background note is to be looked into to ascertain its authenticity, veracity and relevancy. The said record will start from examination of FIR and would include all subsequent documents, like 161/164 Cr.P.C. statements, chargesheets, the documents forming part of the chargesheet, including the 161/164 Cr.P.C. statements, document/articles seized, charge order, prosecution and defense evidence, conviction order and orders passed by the appellate courts. In case this Tribunal, while examination of records, finds that there is a discharge or acquittal order, then this Tribunal will weed out the record of the said FIR and hold the same to be not amounting to material justifying sufficient cause.

242. In this view of the matter, it was submitted that the contention of the proscribed Organization that right of examination is negatory as the person making 161 Cr.P.C. statements is not before Court also pales into insignificance because that is not the only piece of evidence relied upon in isolation by the Central Government while banning an organization but forms part of the chain of evidence which starts from F.I.R. and culminates in acquittal or conviction of any accused.

243. It was further submitted that 161 CrPC statements are relevant for determining the sufficiency of the cause as it is well settled in law that conviction can solely be sustained on the ground of police evidence. As such, the admissibility of the said 161 Cr.P.C. statement would be seen at the time of the trial of the respective FIRs when those persons making 161 Cr.P.C. statement are called into witness box. So far as this Tribunal is concerned, 161 Cr.P.C. statement are only a corroborative piece of material which affirms or gives credence to the contents of the F.I.R.

244. Dehors the aforesaid and without prejudice to the same, it was further submitted by the Learned ASG that 161 CrPC statements are not relied upon by the Central Government in isolation, but are being relied upon in conjunction with the FIRs cited as material constituting sufficient cause for declaring MLJK-MA as an unlawful organization. Apart from the aforesaid, the following additional submissions were also made on behalf of the Central Government to answer the question as to "**Whether Statements of witnesses and accused produced before the Tribunal can be looked at by this Tribunal for arriving at a decision**". To answer the same, examination of following propositions are relevant:-

(A) Strict rules of Evidence Act do not apply to the Tribunal

245. The learned ASG submitted that the provisions of the UAPA do not provide that the provisions of the Evidence Act strictly apply to proceedings before this Tribunal, in which case even the bar contained U/s 25 and 26 of the Evidence Act will not apply to the proceeding before the Tribunal. Rule 3 of the Unlawful Activities (Prevention) Rules 1968 was also referred to which reads as under:-

*"3. **Tribunal and District Judge to follow rules of evidence.**- (1) In holding an inquiry under sub-section (3) of section 4 of disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian evidence Act, 1872 (1 of 1872).*

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not:-

- (a) make such books of account or other documents a part of the records of the proceedings before it; or*
- (b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it."*

246. A Reference was also made to the judgment of Supreme Court in *Jamaat-e-Islami Hind* (supra), in particular to paragraphs 21 and 22, which read as under:-

*"21. To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the *ipse dixit* of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence or material in respect of which the Central Government claims non-disclosure on the ground of public interest.*

*22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office bearers is in public interest, it may permit its non-disclosure to the association or its office bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the *ipse dixit* of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government."*

(B) Procedure and norms applicable to proceedings before the Tribunal:-

247. It was submitted by learned ASG that the Supreme Court in *Jamaat-e-Islami Hind* (supra) laid down the proceedings and the Scope of inquiry in the proceedings to be followed by the Tribunal. The proceedings before this Tribunal are civil in nature. Therefore, she submitted that applying the standard of burden of proof based on preponderance of probabilities, that is, the standard applied in civil cases, the bar contained in Section 162 of Cr.P.C or Sections 25, 26 of the Evidence Act will not apply in the present case. To substantiate her point, she referred to Section 5(5) and Section 9 of the UAPA which read as under:-

"5. Tribunal.—

xxxx xxxx xxxx xxxx xxxx

(5) *Subject to the provisions of section 9, the Tribunal shall have power to regulate its own procedure in all matters arising out of the discharge of its functions including the place or places at which it will hold its sittings.*

(6) *The Tribunal shall, for the purpose of making an inquiry under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, in respect of the following matters, namely:—*

- (a) *the summoning and enforcing the attendance of any witness and examining him on oath;*
- (b) *the discovery and production of any document or other material object producible as evidence;*
- (c) *the reception of evidence on affidavits;*
- (d) *the requisitioning of any public record from any court or office;*
- (e) *the issuing of any commission for the examination of witnesses.*
- (7) *Any proceeding before the Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Tribunal shall be deemed to be a civil court for the purposes of section 195 and 1 [Chapter XXVI] of the 2 [Code].”*

248. It was submitted that Section 5(5) says that subject to provisions of Section 9, the Tribunal shall have the power to regulate its own procedure in all matters arising out of discharge of its functions including the place or places at which it will hold its sittings and Section 5(6) vests on the Tribunal the powers vested in a civil court under the CPC for summoning and enforcing the attendance of any witness, discovery and production of any document or material, receipt of evidence, requisitioning any public record or issuing of any commission, etc. and under Section 5(7), a deeming fiction is created stating the proceedings before the tribunal to be civil proceedings for the purpose of Section 195 Cr.P.C.

249. Section 9 of UAPA reads as under:-

“9. Procedure to be followed in the disposal of applications under this Act.—Subject to any rules that may be made under this Act, the procedure to be followed by the Tribunal in holding any inquiry under sub-section (3) of section 4 or by a Court of the District Judge in disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8 shall, so far as may be, be the procedure laid down in the Code; for the investigation of claims and the decision of the Tribunal or the Court of the District Judge, as the case may be, shall be final.”

250. Ms. Bhati referred to the Constitutional Bench decision of the Supreme Court in the case of ***Union of India vs. Madras Bar Association***, (2010) 11 SCC 1 to contend that there is material distinction conferred upon a tribunal and a court. The relevant paragraph of the same is reproduced hereunder:-

“45. Though both courts and tribunals exercise judicial power and discharge similar functions, there are certain well- recognised differences between courts and tribunals. They are:-

- (i) *Courts are established by the State and are entrusted with the State’s inherent judicial power for administration of justice in general. Tribunals are established under a statute to adjudicate upon disputes arising under the said statute, or disputes of a specified nature. Therefore, all courts are tribunals. But all tribunals are not courts.*
- (ii) *Courts are exclusively manned by Judges. Tribunals can have a Judge as the sole member, or can have a combination of a judicial member and a technical member who is an “expert” in the field to which the tribunal relates. Some highly specialised fact-finding tribunals may have only technical members, but they are rare and are exceptions.*
- (iii) *While courts are governed by detailed statutory procedural rules, in particular the Code of Civil Procedure and the Evidence Act, requiring an elaborate procedure in decision making, tribunals generally regulate their own procedure applying the provisions of the Code of Civil Procedure only where it is required, and without being restricted by the strict rules of the Evidence Act.” (Emphasis Supplied)*

251. Reliance in this regard was also placed on the Constitution Bench of the Supreme Court in the case of ***Union of India vs. T.R. Varma***, 1958 SCR 499, wherein, in respect of the distinction between a tribunal and court, it was held as under:-

“10. Now, it is no doubt true that the evidence of the respondent and his witnesses was not taken in the mode prescribed in the Evidence Act; but that Act has no application to enquires conducted by tribunals, even though they may be judicial in character. The law required that such tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance with

that, which obtained in a Court of law. Stating it broadly and without intending it to be exhaustive, it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the ground that the procedure laid down in the Evidence Act for taking evidence was not strictly followed. Vide the recent decision of this Court in New Prakash Transport Co. Vs New Suwarna Transport Co. (1), where this question is discussed”

(Emphasis Supplied)

252. She further placed reliance on the decision of the Supreme Court in the case of **Tata Consultancy Services Limited vs. Cyrus Investments Private Limited & others**, (2021) 9 SCC 449, where the Supreme Court in Para 173 has held as follows:-

“173. It is true that rigors of CPC and the Evidence Act are not be applicable to tribunals/ quasi-judicial authorities. These rigors do not even apply to courts dealing with constitutional matters (refer the Explanation under Section 141 CPC)”

253. Rule 3(1) clearly says that, as far as practicable, the Tribunal or the District Judge, as the case may be, follow the rules of evidence laid down in Indian Evidence Act. Therefore it was submitted that the provisions of the Evidence Act do not strictly apply to the Tribunal and the Tribunal can in a given case deviate from the rules of the Indian Evidence Act.

254. Further the judgment rendered in **Kishan Singh vs. Gurupal Singh**, 2010 (8) SCC 775 was relied upon, in particular paragraph 18, which reads as under:-

“18. Thus, in view of the above, the law on the issue stands crystallised to the effect that the findings of fact recorded by the civil court do not have any bearing so far as the criminal case is concerned and vice versa. Standard of proof is different in civil and criminal cases. In civil cases, it is preponderance of probabilities while in criminal cases it is proof beyond reasonable doubt. There is neither any statutory nor any legal principle that findings recorded by the court either in civil or criminal proceedings shall be binding between the same parties while dealing with the same subject-matter and both the cases have to be decided on the basis of the evidence adduced therein. However, there may be cases where the provisions of Sections 41 to 43 of the Evidence Act, 1872, dealing with the relevance of previous judgments in subsequent cases may be taken into consideration.”

(C) Standard of Proof:-Preponderance of Probabilities and Consideration of Statements under Section 161 of Cr.P.C and Statement of Accused.

255. Ms. Bhati submitted that for applying the standard of burden of proof based on preponderance of probabilities, that is, the standard applied in Civil Cases, the statements recorded under 161 Cr.P.C would be relevant and can be taken into consideration. In other words, the bar contained in Section 162 Cr.P.C. or Sections 25 and 26 of the Evidence Act will not apply. Sec 162 of Cr. P.C reads as under:-

“162. *Statements to police not to be signed: Use of statements in evidence.*—(1) No statement made by any person to a police officer in the course of an investigation under this Chapter, shall, if reduced to writing, be signed by the person making it; nor shall any such statement or any record thereof, whether in a police diary or otherwise, or any part of such statement or record, be used for any purpose, save as hereinafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made:

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872 (1 of 1872); and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose only of explaining any matter referred to in his cross-examination.

(2) Nothing in this section shall be deemed to apply to any statement falling within the provisions of clause (1) of section 32 of the Indian Evidence Act, 1872 (1 of 1872); or to affect the provisions of section 27 of that Act.

Explanation.—An omission to state a fact or circumstance in the statement referred to in sub-section (1) may amount to contradiction if the same appears to be significant and otherwise relevant having regard to the context in which such omission occurs and whether any omission amounts to a contradiction in the particular context shall be a question of fact.”

256. Learned ASG submitted that from a bare perusal of Section 162 Cr.P.C it is clear that the restriction of use in evidence of any statement recorded U/s 162 Cr.P.C is applicable only to an inquiry or trial in respect of any offence under investigation at the time when such statement was made. Thus, there is no restriction for use of such statement at any inquiry or proceedings which are not in respect of any offence under investigation at that time when such statement was made. Since use of the statement before this Tribunal is obviously not in an inquiry or that in respect of any offence under investigation at the time when such statement was made, the bar under Section 162 Cr.P.C will not apply to proceeding before this Tribunal and that Sections 25 and 26 of Evidence Act will also apply only to confession.

257. Learned ASG submitted that from a bare reading of 25 and 26 of Evidence Act, it is clear that the bar contained under Sections 25 & 26 will only apply to confessions. Therefore, the bar under Sections 25 and 26 of Evidence Act will not apply to a statement which is non-confessional in nature. A statement in order to amount to a confession must admit in terms of the offence or at any rate substantially all the facts will constitute the offence. Reliance in this regard was placed on the judgment of the Supreme Court in the case of *Palvinder Kaur vs. State of Punjab, 1995 (2) SCC 177*, in particular on para 16 thereof, which reads as under:-

*“16. The statement read as a whole is of an exculpatory character. It does not suggest or prove the commission of any offence under the Penal Code by anyone. It not only exculpates her from the commission of an offence but also exculpates Mohinderpal. It states that the death of Jaspal was accidental. The statement does not amount to a confession and is thus inadmissible in evidence. It was observed by their Lordships of the Privy Council in *Pakala Narayana Swami v. King Emperor*[AIR1932MAD507] that the word "confession" as used in the Evidence Act cannot be construed as meaning a statement by an accused suggesting the inference that he committed the crime. A confession must either admit in terms the offence, or at any rate substantially all the facts which constitute the offence. An admission of a gravely incriminating fact, even a conclusively incriminating fact, is not of itself a confession. A statement that contains self-exculpatory matter cannot amount to a confession, if the exculpatory statement is of some fact, which if true, would negative the offence alleged to be confessed. In this view of the law, the High Court was in error in treating the statement of Palvinder as the most important piece of evidence in support of the charge under Section 201 IPC. The learned Judges in one part of their judgment observed that strictly speaking exculpatory statements in which the prisoner denies her guilt cannot be regarded as confessions, but went on to say that such statements are often used as circumstantial evidence of guilty consciousness by showing them to be false and fabricated. With great respect we have not been able to follow the meaning of these observations and the learned counsel appearing at the Bar for the prosecution was unable to explain what these words exactly indicated. The statement not being a confession and being of an exculpatory nature in which the guilt had been denied by the prisoner, it could not be used as evidence in the case to prove her guilt.”*

258. It was submitted by the learned ASG that in the present case it is clear that there is no confessional statement and that the statements recorded under PMLA have different judicial sanctity. Furthermore, there is no offence which this Tribunal is trying, therefore, for the purpose of proceedings before the Tribunal, an admission, even assuming, of the accused persons in the trial of the offence is actually of persons who are not accused of any offence before this Tribunal. The fact that a particular person has committed a particular offence cannot therefore be treated as a confession for the purpose of inquiry before this Tribunal. The Inquiry before this Tribunal is for the limited purpose of adjudicating whether or not there is sufficient cause for declaring the association as “unlawful”. The person whose so called alleged confessions are sought to be treated as barred under Sections 25 and 26 of the Evidence Act are not

even parties before this Tribunal. Therefore, for the purpose of proceedings before this Tribunal, any statement given by such person cannot be treated as a confession. To further elaborate on the point of confession, learned ASG also referred to the Supreme Court Judgments in *Veera Ibrahim vs. The State of Maharashtra*, 1976 (2) SCC 302 [Para 15] and *Ajay singh vs. State of Maharashtra*, 2007 (12) SCC 341 [Para 10].

(D) Case Laws on non-applicability of Section 162 to the proceedings before this Tribunal

259. The judgment in the case of *Khatri & Ors vs. State of Bihar*, 1981 (2) SCC 493 was referred to, particularly para 3, which reads as under:-

"3. Before we refer to the provisions of Sections 162 and 172 of the Criminal Procedure Code, it would be convenient to set out briefly a few relevant provisions of that Code. Section 2 is the definition section and clause (g) of that section defines 'inquiry' to mean "every inquiry, other than a trial conducted under this Code by a magistrate or court". Clause (h) of Section 2 gives the definition of 'investigation' and it says that investigation includes "all the proceedings under this Code for the collection of evidence conducted by a police officer or by any person (other than a magistrate) who is authorised by a magistrate in this behalf".

260. It was submitted with reference to the above case that entries in the case diary, which is an official book, for the purposes of official record, would be relevant and can be relied upon. Similarly, statement recorded under Section 161 of Cr.P.C by the Police officer would also be relevant under Section 35 of the Evidence Act. Since, the provisions of Sec 162 of Cr.P.C would not apply to the proceedings before this Tribunal, statements recorded under Section 161 Cr.P.C would also be relevant under Section 35 and can be considered by this Tribunal. Even chargesheets submitted to the court under Section 173 of Cr.P.C. would be relevant under Section 35 of the Evidence Act.

261. Thus, in this view of the matter, learned ASG submitted that though it is the principal contention of the Central Government that the statements of witnesses recorded under Section 161 of Cr.P.C. is only a part of the record of the FIR which has been relied upon by the Central Government as material to form an opinion that a particular association is indulging into unlawful activity and is required to be banned as unlawful association, in isolation also, there is no bar to refer to the Section 161 statement as an independent piece of evidence of sufficient cause in the proceedings before this Tribunal.

(IV) Acts of persons not associated with the association cannot be attributed to the association

262. The contention of the proscribed Organization to the effect that the acts and unlawful activities of other persons cannot be attributed on the proscribed Organization inasmuch as the Organization is not responsible for the acts of any individuals who are not connected or against whom there is no proof that they are connected with the Proscribed Organization was controverted by the Learned ASG. In this regard, it was submitted that though in principle, the said argument may be correct, however, a closer examination of the facts of the present case manifest that all the FIRs which have been led as material to declare MLJK-MA as an unlawful association shows that the FIRs were registered against the Head of the Association, i.e., Masarat Alam.

263. It was submitted by the learned ASG that in all the FIRs, the contents of the FIRs as well as that of the chargesheet clearly show that the respective offences forming part of the respective FIRs were instigated and commissioned by the Chairman, Office Bearers and Members of the association. Thus, in facts of the present case, it is clear that the office bearers of the Organization were indulging into unlawful activities and were instigating and galvanizing the secessionist movement in the valley. The FIRs do not implicate APHC, but the respective individuals who happen to be members/officer bearers of MLJK-MA.

264. It was further submitted by the learned ASG that the records of FIRs manifest that the galvanization as well as instigation to the public to commit the unlawful activities were done by the office bearers of the Proscribed Organization wherein people were instigated to join the cause of the office bearers of the Proscribed Organization under the banner and umbrella of the said Organization. As such, the Organization is vicariously liable for the acts of omission and commission done on behalf of its office bearers as the said office bearers were alter-ego of the proscribed association.

265. It was further submitted on behalf of the Central Government that the facts recorded in the respective FIRs clearly show that the said FIRs are not registered against extraneous or alien people but have been registered against the individuals who were the office bearers of the Proscribed Organization. In this view of the matter, the contention of the Proscribed Organization that they are made liable for the acts of omission and commission of the people unconnected with the Organization is unsustainable in the eyes of law as the unlawful activities in the present case have been committed by the office bearers of the Proscribed Organization only which has abated and supported other people who have the same cause.

(V) **Abuse of process, unethical conduct and false allegations/assertions made by the proscribed organization before this Tribunal:-**

266. It was submitted by the learned ASG that the proscribed association has indulged into blatant and ex-facie abuse of the opportunity given by this Tribunal to adduce material/witness to rebut the case of the Central Government. It is submitted that the proscribed association has instead used the said opportunity given by this Tribunal to impede the present proceedings by orally setting up a fictitious case of illegal detention of its witnesses. The said fictitious allegation was levelled for the sole purpose of setting up a case that State administration through illegal means have restrained and deterred its witnesses from deposing before this Tribunal because of which the present proceedings have vitiated.

267. It was pointed out that initially the proscribed organization had given a list of witnesses naming 4 persons as their defense witnesses. However, no details of the persons named as defense witness was given in the said list. The facts on which the said witnesses would be deposing was also not given. But, surprisingly, during the course of hearing of the present case scheduled on 14.05.2024, when the proscribed organization had to file the affidavits of the defense witnesses, an oral allegation was levelled that the two witnesses, namely, Firoz Ahmad Khan and Sajad Ahmad Navoo, have been arrested by the J&K Police for the purpose of preventing them from deposing before this Tribunal. The said statement was made orally without any documentary evidence of material supporting such allegation. The source of the said information was also not disclosed by the counsels appearing for the proscribed organization. However, despite there being no document or affidavit in support of the said contention filed by the proscribed organization, an argument was orally made that the instant proceedings have vitiated due to said alleged arrest.

268. In view of the said allegation, the respective SSPs of the District Pulwama and Bandipura, which was the district of residence of the said two witnesses, filed their respective affidavits, both dated 15.04.2024, expressly stating that no arrest of persons with above name was made at any time between 01.04.2024 till 14.04.2024 in their respective districts. A note of submission on behalf of the Central Government was also filed in this regard.

269. It was further pointed out that on 15.04.2024, when the matter was listed next, the counsel appearing for the proscribed Organization, changed her stand by alleging that the above named two witnesses were not arrested but were detained by the J&K Police. During the course of arguments, the counsel for the proscribed association further changed her stand by alleging that the detention of the aforementioned two witnesses was not as per law, i.e., under PSA or any other law in force but was an illegal detention wherein J&K police without any paper work or authority of law

had kept them in detention at an undisclosed location to restrain them from deposing before this Tribunal. It was further averred that such illegal detentions were a matter of common practice in the valley.

270. It was submitted that such serious allegations were again levelled by the counsel of the proscribed Organization without adducing a single piece of document or evidence showing any arrest or detention of the concerned witnesses nor any affidavit of any kith, kin or family member in this regard was filed though liberty was granted by this Tribunal to the proscribed organization to do the same and that to facilitate the deposition of the witnesses of the proscribed organization, this Tribunal had scheduled the hearing in Srinagar and made special arrangements for that purpose. On 20.05.2024 or on 21.05.2024, neither any affidavit was filed by the proscribed association as per the liberty granted by this Tribunal vide its order dated 15.05.2024 nor any witness was produced by it.

271. Learned ASG further pointed out that in response to the serious allegation of illegal detention made by the counsel of the proscribed association, an affidavit dated 20.05.2025 of SSP, North zone, Srinagar and an affidavit dated 21.05.2024 of Inspector General of Police Kashmir zone was filed wherein the circumstances for calling Firoz Ahmad Khan (a registered C category OGW) to police station on the poling day of General Election 2024 for Srinagar has been mentioned and the contention of the proscribed organization that illegal detention are matter of practice in territory of Kashmir has been vehemently refuted as false by the ASG. Further it was specifically stated that there was no restraint on the remaining witnesses to come before this Tribunal for their deposition and as such no appearance of the said witnesses ought to be viewed with suspicion.

272. In view of all the above circumstances, it was submitted on behalf of the Central Government that it is clear that the statement made on behalf of the proscribed association is not only patently false but in the *bona fide* opinion of the Central Government it appears to be a ploy/machination employed by the proscribed association to malign and impede the judicial proceedings of this Tribunal by creating a false case of violation of principles of natural justice.

273. It was further submitted that the finality attached to the present proceedings can be called into question before a writ court only on the ground of procedural impropriety and violation of principles of natural justice and that the present assertion of preventing the witnesses from appearing before this Tribunal appears to be a step in that direction. As such, it was argued on behalf of the Central Government that it is clear that the statement made on behalf of the proscribed association is nothing but a brazen abuse of the process of law and an attempt to mislead and play fraud on this Tribunal.

274. It was also submitted that as pointed out above the conduct of the proscribed association, in general as well as before this Tribunal demands depreciation and a very serious adverse inference to be drawn against it. The association in its affidavit in reply has, without any evidence, levelled allegation of "*serious human right violations in J&K by security forces against the civilians Kashmiri population, including enforced disappearance, custodial torture, fake encounters and sexual violence*" [See: para 6 of reply to Background Note]. To buttress the same, the proscribed association during the hearing of the present matter made all out efforts to set up a false and fictitious case of illegal detention of its witnesses without adducing any document, affidavit or material in support thereof, with an allegation that they were illegally detained to prevent from deposing before this Tribunal and that in all probability, this was done to impede the present proceedings. Further non-appearance of the other two witnesses has not been justified by the proscribed association which speaks volumes about its conduct warranting censure and strict action and the allegations levelled orally are nothing short of perjury and it was submitted by the Central Government that the said oral statements made by the counsels of proscribed association, without any affidavit or evidence proving the same are nothing but scandalous, frivolous and vexatious and hence liable to be deleted from the record as per Order VI Rule 16 of CPC.

(VI) Nature of proceedings and standard of proof before the UAPA Tribunal for declaring an association as unlawful

275. In this regard, it was submitted that the standard of proof in civil and criminal proceedings is entirely different, i.e., of the preponderance of the probability and proof beyond reasonable doubt, respectively. Reference can be made to the case of *Iqbal Singh Marwah vs. Meenakshi Marwah*, (2005) 4 SCC 370, wherein it was *inter alia* held as under:-

“32. Coming to the last contention that an effort should be made to avoid conflict of findings between the civil and criminal Courts, it is necessary to point out that the standard of proof required in the two proceedings are entirely different. Civil cases are decided on the basis of preponderance of evidence while in a criminal case the entire burden lies on the prosecution and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both the cases have to be decided on the basis of the evidence adduced therein.”

276. The nature of the present proceedings and the scope of inquiry in the present proceedings have been laid down by the Hon'ble Supreme Court in *Jamaat-e-Islami Hind* (supra) in the specific context of the provisions of the Unlawful Activities (Prevention) Act, 1967.

277. It was further submitted that the Supreme Court emphasized that Section 4 (1) uses the expression “*for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful*”. Reference was made to Section 4 (2) which requires issue of notice in writing to show cause to the association and sub-section (3) which mandates inquiry in the manner specified in Section 9 after calling for such information as may be necessary from Central Government or from office bearers or members of the association. The Tribunal under Section 4(3) is required to adjudicate and make an order, as it may deem fit, either confirming the declaration made in the notification or cancelling the same. After interpreting the said provisions of the Act, it was held by the Hon'ble Supreme Court in *Jamaat-E-Islami Hind* (supra) as under:-

“11.... The entire procedure contemplates an objective determination made on the basis of material placed before the Hon'ble Tribunal by the two sides; and the inquiry is in the nature of adjudication of a lis between two parties, the outcome of which depends on the weight of the material produced by them. Credibility of the material should, ordinarily, be capable of objective assessment. The decision to be made by the Hon'ble Tribunal is “whether or not there is sufficient cause for declaring the Association unlawful”. Such a determination requires the Hon'ble Tribunal to reach the conclusion that the material to support the declaration outweighs the material against it and the additional weight to support the declaration is sufficient to sustain it. The test of greater probability appears to be the pragmatic test application in the context.”

278. It was submitted by Learned ASG that the aforesaid ratio was affirmed after making reference to Section 5, which stipulates that the Tribunal shall be headed by a Judge of the High Court and proceedings will be deemed to be judicial proceedings and the Tribunal shall be deemed to be a civil court for the purpose specified. It was accordingly held that the opinion given by the Tribunal under Section 5 has binding effect and has been given a characteristic of judicial determination as distinguished from an opinion of an Advisory Board under the preventive detention laws. Section 4 of the Act requires issue of notice by giving opportunity to show cause to the association. Accordingly, the Supreme Court held that the objective findings by the Tribunal must be based upon materials required to support the judicial determination. It was submitted that while deciding the reference, the Tribunal does not act or exercise power of judicial review under Article 226 of the Constitution of India on whether or not declaration under Section 3(1) should have been made but goes into the factual existence of the grounds by objective determination of the *lis* between the Government and the association.

279. Learned ASG pointed out that after referring to the nature of evidence and the procedure which a Tribunal should adopt it was held by the Supreme Court that the minimum requirements of natural justice must be satisfied to

ensure that there is meaningful adjudication. However, the requirements of natural justice have to be tailored to safeguard public interest which must outweigh every lesser interest. In this connection, reference was made to Section 3 (2) of the Act and Rule 3 (2) and proviso to Rule 5 of UAP Rules for withholding/non-disclosure of facts which the Central Government considers against public interest, and non-disclosure of confidential documents and information which the Government considers against public interest to disclose.

280. On the question of nature and type of evidence, which can be relied upon by the Tribunal, the Supreme Court referred to Rule 3(1) which stipulates that the Tribunal subject to sub-rule (2) shall follow, as far as practicable, the rules of evidence laid down in Indian Evidence Act. Therefore, the rules of evidence as far as practicable as laid down in the Evidence Act, should be followed. In this regard, reference was made by the Learned ASG to the following observations in *Jamaat-E-Islami Hind* (supra):-

"22. ... The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Hon'ble Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardizing the public interest. This would also ensure that the process of adjudication is not denuded to its content and the decision ultimately rendered by the Hon'ble Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government."

23. In *John J. Morrisey and G. Donald Booher v. Lou B. Brewer*, the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under:

"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (Unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. We emphasize there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in n adversary criminal trial".

24. xxxxx xxxxx xxxxx xxxxx
 25. xxxx xxxxx xxxxx xxxxx

26....*The provision for adjudication by judicial scrutiny, after a show-cause notice of existence of sufficient cause to justify the declaration must necessarily imply and import into the inquiry, the minimum requirement of natural justice to ensure that the decision of the Hon'ble Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Hon'ble Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Hon'ble Tribunal can assess its true worth. This has to be determined by the Hon'ble Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict, sense, and that the scrutiny is not a criminal trial. The Hon'ble Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires. "*

(Emphasis Supplied)

281. Learned ASG submitted that a reading of Section 9 of the Act read with Section 3(1) of the Unlawful Activities (Prevention) Act, 1967 makes it clear that the Tribunal shall follow the procedure laid down in the Code of Civil Procedure for investigations of the claims before it and that the opinion formed by the Tribunal will be governed by the principles applicable to Civil Law and accordingly, the principles of preponderance of probabilities apply and not proof beyond reasonable doubt.

282. By referring to the decision of the Supreme Court in *Jamaat-E-Islami Hind* (supra), learned ASG submitted that the Supreme Court has observed that the test of greater probability as given below will apply:-

- i) the proceedings before the Hon'ble Tribunal are in the nature of a *lis* between two parties;
- ii) the proceedings are governed by the Code of Civil Procedure and the principles are applicable to civil cases;
- iii) the Tribunal is to adopt a procedure conforming to minimum requirement of natural justice;
- iv) the Tribunal shall follow, as far as practicable, the rules laid down in the Evidence Act. However, the material need not be confined to legal evidence in strict sense.

283. It was further submitted by learned ASG that the ingredients of ‘unlawful activity’ as defined under Section 2(o) of the said Act requires the objective consideration of the Tribunal to reach at the conclusion of declaring an association as “unlawful” under the UAPA Act. Reference was again made to the Supreme Court decision in *Jamaat-E-Islami Hind* (supra) to the following effect:-

“9. Clauses (f) and (g) of Section 2 contain definitions of “unlawful activity” and “unlawful association” respectively. An “unlawful activity”, defined in clause (f), means “any action taken” of the kind specified therein and having the consequence mentioned. In other words, “any action taken” by such individual or association constituting an “unlawful activity” must have the potential specified in the definition. Determination of these facts constitutes the foundation for declaring an association to be unlawful under sub-section (1) of Section 3 of the Act. Clause (g) defines “unlawful association” with reference to “unlawful activity” in sub-clause (i) thereof, and in sub-clause (ii) the reference is to the offences punishable under Section 153-A or Section 153-B of the Penal Code, 1860. In sub-clause (ii), the objective determination is with reference to the offences punishable under Section 153-A or Section 153-B of the IPC while in sub-clause (i) it is with reference to “unlawful activity” as defined in clause (f). These definitions make it clear that the determination of the question whether any association is, or has become, an unlawful association to justify such declaration under sub-section (1) of Section 3 must be based on an objective decision; and the determination should be that “any action taken” by such association constitutes an “unlawful activity” which is the object of the association or the object is any activity punishable under Section 153-A or Section 153-B IPC. It is only on the conclusion so reached in an objective determination that a declaration can be made by the Central Government under sub-section (1) of Section 3.”

284. It was further submitted by the learned ASG that the Tribunals constituted under the UAPA, 1967 for the declaration of several organizations as unlawful association have decided over the nature of proceedings and admissibility of statements under Section 161 CrPC under the Evidence Act and are mentioned as under:-

- A. Paragraph Nos.24 to 65 of Judgment (Report) of Hon'ble Justice Sanjiv Khanna in SIMI Matter are relevant. (*Internal Page Nos. 08 to 18*);
- B. Paragraph No.336 of Judgments of Hon'ble Justice Sanjiv Khanna is relevant;
- C. Paragraph Nos.7.1 (Part-VII Legal issues) to 7.30 (internal page Nos. 42 to 55) of Judgment (Report) of Hon'ble Justice Mukta Gupta in SIMI Matter;
- D. Paragraph Nos.271 to 325 (internal page nos 64 to 83) of Judgment of Hon'ble Justice Dinesh Kumar Sharma in PFI MATTER. (paragraph Nos.285, 288, 312, 313 & 315 are more relevant).

285. Accordingly, it was submitted that the decision of the Central Government to declare MLJK as ‘unlawful association’ is entirely on the documentary evidences and testimonies of the witnesses/protected witnesses filed during the course of investigation by different Investigating Agencies as stated in the above paragraphs.

(VII) Material available against the proscribed organization which has not been disproved by it and justifies confirmation of ban imposed on the proscribed association:-

286. It was submitted by the learned ASG that there is overwhelming evidence available against the proscribed organization which has not been disproved by it. The details of the same are mentioned as under:-

- (i) A chart containing details of all the FIRs registered against the proscribed organization is annexed with the written submissions and is marked as Annexure A-1;
- (ii) A chart containing the FIRs where secessionist speeches and slogans were raised by the office bearers and members of the proscribed organization is also annexed and is marked as Annexure A-2;
- (iii) A chart of FIRs where recovery of incriminating material was made in various FIRs registered against the office bearers and members of the proscribed organization is also annexed and is marked as Annexure A-3;
- (iv) A chart of videos recovered by the NIA showing secessionist speech delivered by office bearers and members of proscribed organization along with its transcript is annexed and is marked as Annexure A-4.

287. On the strength of the aforesaid material, it was submitted that the said incriminating material clearly establishes that MLJK has continuously been engaging in the secessionist activities and therefore the ban imposed on the said association by the Central Government is liable to be confirmed.

(VIII) Argument of near continuous detention is misconceived

288. It was submitted by the learned ASG that the contention of the proscribed association that no offence can be committed by the office bearers and members of the proscribed organization as they were in ‘near continued detention’ is misconceived. To substantiate this argument, it was pointed out that the following FIRs were registered for the offences committed by the office bearers and members of proscribed organization while being in custody:-

List of FIRs with details of activities of the accused from jail premises

S.No.	FIR	Particulars	Page Nos.
1.	FIR NO. 238/1995	It was stated in the complaint that 28.06.1995 was a scheduled meet day of prisoners with their relatives. However, as routine deployment could not reach on time, there was slight delay in the said process. Taking advantage of the said situation, Masarat Hussain Bhat, Javaid Ah. Basmati, Mohd. Ameen Shora, Musaib Qadir Zargar, Mohd. Shafi Ganie, Mohd. Shafi, Ab. Majeed Dar, Ayaz Ah. Dar, Ali Mohd. Dar and Mohd. Ashraf Bhat instigated other inmates to set ablaze the jail premise. Glass windows were broken and quilts too were set ablaze as a result of the said violence. They even pelted stones at CIK officials.	Pages 5 & 6, Para 6 (Affidavit of Sh. Mohd. Ashrif)
2.	FIR NO. 160/1996	The accused prisoner Mohd. Shafi Ganie on being intimated regarding the change in lodgement started shouting and threatening the complainant. Other accused, namely, Masarat Hussain and Musaib Qadir carried the accused Mohd Shafi Ganie on their shoulders and conspired to help him jump the jail fencing.	Pages 8 & 9, Para 8 (Affidavit of Sh. Mohd. Ashrif)
3.	FIR NO. 07/2010	Accused Masarat Alam on being released by the Court, threatened the SHO PS Nigeen with dire consequences.	Page 5, Para 6 (Affidavit of Sh. Hari Prasad)

4.	FIR NO. 258/2016	Chairman MLJK-MA, Masarat Alam Bhat, when lodged in Sub jail Baramulla, was conducting and participating in unlawful activities from the jail premise itself. Under the garb of meeting his associates, he contacted and instigated the terrorists to spread terrorism across the Baramulla district. The said accused took further advantage of the situation which arose due to the killing of Burhan Wani. With the support of self-styled associates of his organisation, he instigated and provoked the youth to be a part of the terrorist activities.	Page 11, Para 13 (Affidavit of Sh. Syed Yasir Qadri)
5.	FIR NO. 52/2017	Anti-national elements, namely, Tariq Ahmad War, Bashir Ahmad Sofi, Masarat Alam Bhat, Irshad Ahmad Bhat, Sajad Ahmad Khan, who were lodged in sub-jail Baramulla, had illegally obtained mobile phones under the garb of meeting their associates. They further managed to carry out unlawful activities from the jail premises.	Page 12, Para 15 (Affidavit of Sh. Syed Yasir Qadri)

289. In view of all the aforesaid facts and circumstances, it was argued that the Notification No.S.O.5462(E) dated 27.12.2023 issued by the Central Government declaring MLJK-MA as an unlawful association is liable to be confirmed as there is sufficient evidence/cause on record justifying the ban on MLJK-MA.

(IX) Claim of Privilege

290. Sh. Rajesh Kumar Gupta, Director (Counter Terrorism), MHA (PW-19) was examined on behalf of the Union of India on 16.05.2024. Besides his examination and cross-examination conducted by learned counsel for the association, this witness had produced original files containing the central intelligence reports/inputs in a sealed cover for the perusal of this Tribunal (**Ex.PW-19/3**).

291. Mr. Rajat Nair, learned counsel for the Union of India, while arguing for claiming privilege for producing documents in sealed cover, had referred to Section 123 of the Evidence Act read with Section 3(2) of the UAP Rules, 1968, which are reproduced as under:-

Indian Evidence Act, 1872

“123. Evidence as to affairs of State – No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.”

The Unlawful Activities (Prevention) Rules, 1968

“3. Tribunal and District Judge to follow rules of evidence.-

- (1) In holding an inquiry under sub-section (3) of section 4 or disposing of any application under sub-section (4) of section 7 or sub-section (8) of section 8, the Tribunal or the District Judge, as the case may be, shall, subject to the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).***
- (2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be of a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not,-***
 - (a) Make such books of account or other documents a part of the records of the proceedings before it; or***
 - (b) Allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.”***

292. Learned counsel for the Union of India submitted that the claim of privilege by the Union of India for the documents placed is made as the documents are of such a nature that the non-disclosure of which would be in the interest of the public. It was submitted that this concept of public interest is taken into account even in the criminal proceedings *qua* the accused, whereas in juxtaposition, the present matter stands at a much higher pedestal and involves the issue of sovereignty and integrity of the country.

293. Mr. Nair submitted that the UAPA and the Rules framed thereunder provide for a mechanism to claim privilege and withhold certain facts/documents to seek non-disclosure of the same. The learned counsel then placed reliance on the judgment in *Jamaat-e-Islami Hind* (supra), wherein the Supreme Court has held as under:-

"19. ...the proviso to sub-section (2) of Section 3 of the Act itself permits the Central Government to withhold the disclosure of acts which it considers to be against the public interest to disclose. Similarly, Rule 3(2) and the proviso to Rule 5 of the Unlawful Activities (Prevention) Rules, 1968 also permit nondisclosure of confidential documents and information which the Government considers against the public interest to disclose..."

20...

21. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest.

22....in such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense.

23...

24. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken."

294. The learned counsel also relied on the judgment in *People's Union for Civil Liberties vs. Union of India*, (2004) 2 SCC 476, where it was, *inter alia*, held as under:-

"69. The legislative policy behind the aforementioned provisions is no longer res integra. The State must have the prerogative of preventing evidence being given on matters that would be contrary to public interest.

70. For determining a question when a claim of privilege is made, the Court is required to pose the following questions:

- (1) *whether the document in respect of which privilege is claimed, is really a document (unpublished) relating to any affairs of State; and*
- (2) *whether disclosure of the contents of the document would be against public interest?*

71. When any claim of privilege is made by the State in respect of any document, the question whether the document belongs to the privileged class has first to be decided by the court. The court cannot hold an enquiry into the possible injury to public interest which may result from the

disclosure of the document in question. The claim of immunity and privilege has to be based on public interest.

72. *The section does not say who is to decide the preliminary question viz. whether the document is one that relates to any affairs of State, or how it is to be decided, but the clue in respect thereof can be found in Section 162. Under Section 162 a person summoned to produce a document is bound to —bring it to the court, notwithstanding any objection which there may be to its production or to its admissibility. The validity of any such objection shall be decided on by the court. It further says that: —The court, if it seems fit, may inspect the document, unless it refers to matters of State, or take other evidence to enable it to determine on its admissibility*

73. *In order to claim immunity from disclosure of unpublished State documents, the documents must relate to affairs of the State and disclosure thereof must be against interest of the State or public interest.”*

295. The learned counsel, thus, submitted that from a bare reading of the aforesaid judgment of the Supreme Court, it is clear that an inquiry contemplated under the UAPA gives a right to the government to claim privilege of sensitive documents in public interest/national interest and in the interest of justice; which right has been duly upheld by the Supreme Court; and that in the present case, the documents for which claim of privilege is sought, by their very nature, are confidential and sensitive in nature and, therefore, cannot be supplied as a public document.

296. The learned counsel submitted that the documents form part of the evidence collected by the intelligence agencies which pertain to secessionist and unlawful activities of the MLJK-MA and those associated with it and the said documents are confidential and secret in nature and the same can be verified by the Tribunal only. The learned counsel further submitted that the nature of material placed in the sealed cover by the Central Government is in the form of intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, communications between the intelligence agencies, information which may lead to further recoveries, discoveries of facts as also unearth conspiracies, the disclosure whereof would be clearly detrimental to the larger public interest and the security of the State. The learned counsel also submitted that the material filed by the Central Government contains the note then put up to the Cabinet Committee on Security along with documents supporting the note and the grounds on which the notification was issued besides intelligence inputs and correspondence in relation thereto. Hence, the claim of privilege of the documents by the Central Government is in accordance with law and the documents submitted in the sealed cover are not required to be disclosed in the public interest.

297. Learned counsel for the Union of India further submitted that the sealed cover material as mentioned in the affidavit of the witness from MHA, forms part of the evidence which is inherently and dehors being part of the evidence of the present proceeding is of confidential nature, disclosure of which would be contrary, not only to the public interest but also to national interest and the interest of justice. In the same breath, the learned counsel submitted that the privilege of the said documents is claimed based on the nature of documents which impinge upon national security. The disclosure of these documents to the other side would jeopardize not only the interest and safety of certain individuals but would also compromise national security.

298. Mr. Nair, learned counsel for the UOI submitted that with regard to the claim of privilege for non-disclosure of sealed documents, the Supreme Court in *S.P. Gupta* (supra), has held as under:-

“73. We have already pointed out that whenever an objection to the disclosure of a document under Section 123 is raised, two questions fall for the determination of the court, namely, whether the document relates to affairs of State and whether its disclosure would, in the particular case before the court, be injurious to public interest. The court in reaching its decision on these two questions has to balance two competing aspects of public interest, because the document being one relating to affairs of State, its disclosure would cause some injury to the interest of the State or the proper functioning of the public service and on the other hand if it is not disclosed, the nondisclosure would thwart the administration of justice by keeping back from the court a material document. There are

two aspects of public interest clashing with each other out of which the court has to decide which predominates. The approach to this problem is admirably set out in a passage from the judgment of Lord Reid in Conway v. Rimmer [(1968) AC 910, 952, 973, 979, 987, 993 : (1968) 1 All ER 874 (HL)] :

"It is universally recognized that there are two kinds of public interest which may clash. There is the public interest that harm shall not be done to the nation or the public service by disclosure of certain documents, and there is the public interest that the administration of justice shall not be frustrated by the withholding of documents which must be produced if justice is to be done. There are many cases where the nature of the injury which would or might be done to the nation or the public service is of so grave a character that no other interest, public or private, can be allowed to prevail over it. With regard to such cases it would be proper to say, as Lord Simon did, that to order production of the document in question would put the interest of the State in jeopardy. But there are many other cases where the possible injury to the public service is much less and there one would think that it would be proper to balance the public interests involved."

299. Learned counsel, therefore, submitted that the rigors of *S.P Gupta* (supra) for claiming privilege have to be read in context of the provisions of UAPA and the Rules framed thereunder which provide that document, disclosure whereof may not be in the public interest, be not disclosed. He further submitted that the UAP Rules, as quoted above, startwith a *non obstante* clause and thus an inbuilt mechanism has been provided under the UAPA and the Rules framed thereunder. Accordingly, the Tribunal is mandated to grant privilege forbidding disclosure where the claim of the Government is that the disclosure of such documents could affect the larger public interest of the nation by jeopardizing the safety and sovereignty of the country and also finds that the public interest outweighs the interest of the association/members/office bearers.

300. Learned counsel submitted that the claim of confidentiality has to satisfy on the test of character of the document and if on an objective satisfaction it is concluded that the document is of such a character that its disclosure will injure public interest, the contents thereof cannot be permitted to be disclosed to the other side. Thus, the foundation of immunity from non-disclosure stems from the character of the document and an act of balancing public interest against the interest of the individual, the office bearer or the association which has been banned, has to be carried out by the Tribunal.

301. The learned counsel further submitted that the Statement of Objects and Reasons of the UAPA itself underlines the purpose of the enactment to provide for the more effective prevention of certain unlawful activities of individuals and associations and for matters connected therewith. She submitted that the statute empowers the Parliament to impose by a due process of law reasonable restrictions in the interest of sovereignty and integrity of India on the right to form an association and incidentally a restriction on the freedom of speech and expression, to assemble peacefully and with arms. UAPA being a special statute, the procedure provided therein necessarily prevails on the general provisions of law. Learned counsel submitted that, further Section 48 of the UAPA itself provides that the provisions of the UAPA and the Rules made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of an enactment other than this Act giving a clear over-riding position.

302. In view of the aforesaid position, the learned counsel submitted that the Central Government respectfully claims privilege on the documents contained in the sealed cover, as mentioned in the affidavit filed by the Central Government.

(X) Unlawful Activity & Unlawful Association: Scope of Unlawful Activities (Prevention) Act, 1967

303. Learned ASG submitted that as per the Statement of Objects and Reasons, the Unlawful Activities (Preventive) Act, 1967 was enacted to make powers available for dealing with activities directed against the integrity

and sovereignty of India which may take the manner and form either of “terrorism” or “other unlawful activity” that threatens the sovereignty of India.

304. Learned ASG submitted that the exception to the freedom of speech and expression, and to form associations and union, under Article 19(1) of the Constitution of India, was inserted in the form of “sovereignty and integrity of India” in Article 19(2) and 19(4), after the National Integration Council appointed a Committee on National Integration and Regionalization. The said Committee was to look into the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Learned ASG submitted that pursuant to the acceptance of recommendations of the Committee, the Constitutional Sixteenth (Amendment) Act 1963 was enacted to impose reasonable restrictions in the interests of the sovereignty and integrity of India. Further, in order to implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in the Parliament. The main objective of the Unlawful Activities (Prevention) Act is to make powers available for dealing with activities directed against the integrity and sovereignty of India.

305. Learned ASG submitted that after Independence of India, Parliament of India has passed many laws to regulate national security and in order to protect sovereignty of India. The UAPA, 1967 is an Act to provide for the more effective prevention of certain unlawful activities of individuals and associations and for dealing with terrorist activities and other matters connected therewith. Learned ASG submitted that the present Act is the Central Act and has been amended time and again to tackle the menace of terrorism and terrorist activities from India.

306. Learned ASG further submitted that to achieve the aforesaid purpose of tackling the menace of activities inimical to the sovereignty and integrity of India, the legislature in its wisdom decided to create two species of the offence, i.e.,

- a. Unlawful Activity & Unlawful Association [S-2(o) r/w Chapter 2 & 3 (Sections 3-14)]; and
- b. Terrorist Act & Terrorist Organization [S-2(k), (I),(m) r/w Chapter 4-6 (Sections 15-40)].

307. Learned ASG further submitted that the growing threat of terrorism posed immediate harm to the lives of the Indian citizens and the security of the State led to the enactments of special deterrent laws from time to time. Learned ASG submitted that notably, the repeal of the Prevention of Terrorist Activities Act, 2002 entailed an absence of a legal framework to address the menace of terrorism. Accordingly, as a consequence, the UAPA was amended to include a definition of the term ‘terrorism’ and to give substantive powers to the Indian State to address the same. The amendments made therein were made also keeping in mind India's commitments under the Security Council Resolution dated 28th September, 2001, which enjoined to fight both terrorism as well as terror funding, which was to be treated as a genus of terrorism. The amendments were in furtherance of the global fight against terrorism.

308. In view of the aforesaid, learned ASG submitted that it is evident that the provisions of UAPA have been enacted by the Parliament which had the legislative competence to enact the same and that once it is clear that the Parliament had the legislative competence to enact the law, there is a presumption of constitutionality in favour of the statute. It is further submitted that there is always presumption of constitutional validity of the statute and it is presumed that the Legislature understands the needs of the people. Learned ASG submitted that an organization can be banned solely based on the opinion of the Central Government and, therefore, the challenge to Chapter II of UAPA has already been repelled by the Hon'ble Supreme Court in para 84 -92 of *Arup Bhuyanv vs. State of Assam*, (2023) 8 SCC 745. In para 90 of this judgment, the Hon'ble Supreme Court held as under:-

“90. Thus from the aforesaid it can be seen that before any organization is declared unlawful a detailed procedure is required to be followed including the wide publicity and even the right to a member of such association to represent before the Tribunal. As observed hereinabove the notification issued by the Central Government declaring a particular association unlawful, the same is subject to inquiry and approval by the Tribunal as per Section 4. Once that is done and despite

that a person who is a member of such unlawful association continues to be a member of such unlawful association then he has to face the consequences and is subjected to the penal provisions as provided under Section 10 more particularly Section 10(a)(i) of the UAPA, 1967.”

309. Learned ASG submitted that from the aforesaid discussion of the Supreme Court, it is clear that an organization can be banned solely on the basis of the opinion of the Central Government and through the process duly established by the law enacted by the Parliament.

310. Learned ASG for the Union of India submitted that the proceedings before this Tribunal are civil in nature and the standard of proof is the standard prescribed by the Supreme Court in *Jamaat-e-Islami Hind* (supra) and the matter has to be decided by objectively examining which version is more acceptable and credible. In this regard, learned ASG has referred to the observation made in para 30 of *Jamaat-e-Islami Hind* (supra). Learned ASG also argued that the procedure to be followed by the Tribunals can be read from the law enacted under the Administrative Tribunals Act, 1985. Learned ASG then submitted that similarly the Tribunal established under the UAPA has been bestowed with certain powers and the procedure to be adopted by it under Section 5 read with Section 9 of the said Act.

311. Learned ASG has submitted that as per the mandate of Section 4 of the UAPA, the jurisdiction of this Tribunal is to adjudicate whether or not there is sufficient cause available with the Central Government to ban the organization in question. Learned ASG has submitted that any procedural irregularities or defects in material adduced before this Tribunal are to be tested by the concerned trial court within the parameters of the Indian Evidence Act, 1872 and other relevant laws. Learned ASG further submitted that the jurisdiction of this Tribunal is to satisfy itself whether these documents can be relied upon to ascertain ‘sufficiency of cause’ and whether the agencies responsible for the enforcement of law and order could or could not have ignored the same for recommending suitable action under the UAPA.

312. Learned ASG has further submitted that the evidence adduced by the Central Government is concrete and effective which has not been controverted by the association. Moreover, despite providing the opportunity, the association has not examined its witnesses as stated above and as such, in view of the concrete evidence adduced by the Central Government, the ban imposed vide Notification No.S.O.5462(E) published in the Gazette of India, Extraordinary, dated 27th December, 2023, declaring the MLJK-MA as an ‘unlawful association’ under sub-Section (1) of Section 3 of the Unlawful Activities (Prevention) Act, 1967 is liable to be confirmed.

313. As regards the hostile environment prevailing in the territory of Jammu & Kashmir creating hurdles in conclusion of cases against the separatist and militants, the learned ASG submitted that as has been stated in the testimonies of various witnesses, the delay in the investigation and trial has occurred due to extremely hostile environment which prevailed in the erstwhile State of Jammu and Kashmir. Learned ASG submitted that it is a matter of public knowledge that since last more than three decades, the erstwhile State of Jammu and Kashmir has been adversely affected by the acts and deeds of the Separatist groups and its leaders.

314. Learned ASG submitted that from 1989 to 2016 the situation in the erstwhile State of Jammu and Kashmir remained volatile and disturbed due to the circumstances created by terrorist groups camouflaged as Separatist Groups/Political Parties or self-styled political leaders who instigated and provoked the general public at large against the lawfully established governments with the help of foreign state and non-state actors having interests inimical to the interest of the country. Learned ASG has submitted that these facts have been referred to in the concurring opinion of Justice Sanjay Kishan Kaul in para-31 and Epilogue recorded in para 113-135 in the judgment *Re: Article 370 of the Constitution, 2023 SCC Online SC 1647*.

315. Learned ASG submitted that the separatist leaders and their activists had created such terror in the minds of

public that the general public, which even did not support their cause, feared to oppose them or to report to the police against various incidents and even feared to depose or give evidence against the said separatist leaders. Thus, leading to a non-cooperative atmosphere for the police investigating agencies in the cases registered against the said separatist organizations or its leaders.

316. Learned ASG has also submitted that the NIA in its charge-sheet filed on 18.01.2018 in RC-10/2017/NIA/DLI vide paragraphs 17.2. to 17.5 has highlighted the magnitude of secessionist and terrorist activities in the Kashmir valley and the nexus of MLJK-MA and cross border terrorist organizations in the Kashmir valley and that the investigation carried out by the NIA, therefore, corroborates the hostile environment in the State of Jammu and Kashmir for a long period of time which could not let the Investigating Agency to complete the investigations in respective FIRs.

317. The learned ASG submitted that a bare perusal of the facts stated in the NIA charge-sheet read with the facts stated in the judgment of the Supreme Court in *Re: Article 370 of the Constitution* (supra), it can be clearly inferred that prior to coming into force the Jammu & Kashmir Re-Organization Act, 2019, the various successive governments / authorities from 2004 to 2019 for the reasons recorded in the judgment of the Supreme Court did not take any stern action against the separatists. Learned ASG submitted that the said authorities rather than concentrating on prosecuting the criminal acts of separatist and secessionist forces, indulged in dialogue. Learned ASG submitted that it appears that due to such non-conducive and hostile environment the investigations / prosecutions could not reach to their logical conclusions, which are not taken up with a sense of urgency and seriousness post coming into force the Jammu and Kashmir Re-Organization Act, 2019.

318. Learned ASG submitted that despite several FIRs having been lodged against Masarat Alam Bhat and other members of MLJK-MA, its members / activists / sympathizers are still active and are indulging in unlawful activities as defined in the UAPA and are indulging in anti-national activities posing a serious threat to the sovereignty and integrity of India, peace, communal harmony, internal security and maintenance of secular fabric of the Indian society. Learned ASG has submitted that if the MLJK-MA is not banned again, the activists and sympathizers of MLJK-MA will again pose a serious threat to the communal harmony, internal security and integrity of the country.

319. Lastly, learned ASG has submitted that the notification No. S.O. 5462(E); dated December 27th, 2023 issued by the Central Government declaring MLJK-MA as an unlawful association is based on the information and material received from the State Government of Jammu and Kashmir, the National Investigation Agency, Directorate of Enforcement and the various intelligence agencies, with regard to the unlawful activities of the MLJK-MA and is liable to be confirmed.

XI. UNION OF INDIA's CLAIM FOR PRIVILEGE

320. On 16.05.2024, when Sh. Rajesh Kumar Gupta, Director (Counter Terrorism), MHA (PW-19) was examined on behalf of the Union of India and cross-examination by learned counsel for the association, this witness had produced original files containing the central intelligence reports/inputs in a **sealed cover** for the perusal of this Tribunal (**Ex.PW-19/3**) and Mr. Rajat Nair, learned counsel for the Union of India, advanced arguments for claiming privilege for the documents produced in sealed cover.

321. The issue regarding privilege by the Central Government in respect of the documents disclosure whereof is injurious to public interest is specifically envisaged in the UAP Rules, 1968. Rule 3 of the said UAP Rules, is in the following terms :-

“3. Tribunal and District Judge to follow rules of evidence.—(1) In holding an enquiry under sub-section (3) of Section 4 or disposing of any application under sub-section (4) of Section 7 or sub-section (8) of Section 8, the Tribunal or the District Judge, as the case may be, shall, subject to

the provisions of sub-rule (2), follow, as far as practicable, the rules of evidence laid down in the Indian Evidence Act, 1872 (1 of 1872).

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), where any books of account or other documents have been produced before the Tribunal or the Court of the District Judge by the Central Government and such books of account or other documents are claimed by that Government to be a confidential nature then, the Tribunal or the Court of the District Judge, as the case may be, shall not, --

(a) make such books of account or other documents a part of the records of the proceedings before it; or

(b) allow inspection of, or grant a copy of, the whole of or any extract from, such books of account or other documents by or to any person other than a party to the proceedings before it.”

321. It can be seen that the Rule 3 (2) starts with a non-obstante clause providing that notwithstanding anything contained in the Indian Evidence Act, 1872, where any books of account or other documents are sought to be produced by the Central Government and these documents are claimed to be of a confidential nature, then the Tribunal shall not make such documents a part of the records of the proceedings before it or allow inspection of or grant a copy of the same to any person other than the parties to the proceedings before it.

322. Rule 5 of the UAP Rules provides for the documents which should accompany a reference to the Tribunal viz. a copy of the notification and all facts on which grounds specified in the notification are based, further provides that nothing in the said Rule shall require the Central Government to disclose any fact to the Tribunal which it considers against public interest to disclose. The said rule is in the following terms:-

“5. Documents which should accompany a reference to the Tribunal. – Every reference made to the Tribunal under sub-section (1) of Section 4 shall be accompanied by –

- (i) a copy of the notification made under sub-section (1) of Section 3, and
- (ii) all the facts on which the grounds specified in the said notification are based:

Provided that nothing in this rule shall require the Central Government to disclose any fact to the Tribunal which that Government considers against the public interest to disclose.”

323. The aforementioned provisions and the requirement of maintaining confidentiality of certain documents specifically came to be considered by the Supreme Court in the case of **Jamaat-e-Islami Hind** (supra), wherein it was held as under:-

“22. It is obvious that the unlawful activities of an association may quite often be clandestine in nature and, therefore, the source of evidence of the unlawful activities may require continued confidentiality in public interest. In such a situation, disclosure of the source of such information, and, may be, also full particulars thereof, is likely to be against the public interest. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder provide for maintenance of confidentiality, whenever required in public interest. However, the non-disclosure of sensitive information and evidence to the association and its office-bearers, whenever justified in public interest, does not necessarily imply its non-disclosure to the Tribunal as well. In such cases where the Tribunal is satisfied that non-disclosure of such information to the association or its office-bearers is in public interest, it may permit its non-disclosure to the association or its office-bearers, but in order to perform its task of adjudication as required by the Act, the Tribunal can look into the same for the purpose of assessing the credibility of the information and satisfying itself that it can safely act on the same. In such a situation, the Tribunal can devise a suitable procedure whereby it can itself examine and test the credibility of such material before it decides to accept the same for determining the existence of sufficient cause for declaring the association to be unlawful. The materials need not be confined only to legal evidence in the strict sense. Such a procedure would ensure that the decision of the Tribunal is an adjudication made on the points in controversy after assessing the credibility of the material it has chosen to accept, without abdicating its function

by merely acting on the ipse dixit of the Central Government. Such a course would satisfy the minimum requirement of natural justice tailored to suit the circumstances of each case, while protecting the rights of the association and its members, without jeopardising the public interest. This would also ensure that the process of adjudication is not denuded of its content and the decision ultimately rendered by the Tribunal is reached by it on all points in controversy after adjudication and not by mere acceptance of the opinion already formed by the Central Government.

23. In *John J. Morrissey and G. Donald Booher v. Lou B. Brewer* the United States Supreme Court, in a case of parole revocation, indicated the minimum requirements to be followed, as under: (L Ed pp. 498-99)

"Our task is limited to deciding the minimum requirements of due process. They include (a) written notice of the claimed violations of parole; (b) disclosure to the parolee of evidence against him; (c) opportunity to be heard in person and to present witnesses and documentary evidence; (d) the right to confront and cross-examine adverse witnesses (unless the hearing officer specifically finds good cause for not allowing confrontation); (e) a 'neutral and detached' hearing body such as a traditional parole board, members of which need not be judicial officers or lawyers; and (f) a written statement by the fact finders as to the evidence relied on and reasons for revoking parole. We emphasise there is no thought to equate this second stage of parole revocation to a criminal prosecution in any sense. It is a narrow inquiry; the process should be flexible enough to consider evidence including letters, affidavits, and other material that would not be admissible in an adversary criminal trial."

24. In *Paul Ivan Barzun v. Edward S. King* placing reliance on Morrissey, while dealing with a similar situation, when confidential information had to be acted on, it was indicated that the credibility issue could be resolved by the Board retaining confidentiality of the information but assessing the credibility itself, and a modified procedure was indicated as under:

"... the board was required to decide whether it would believe the informants or the parolee and his witnesses. The infirmity that we see in the hearing and determination by the parole board is that it resolved the credibility issue solely on the basis of the State report, without itself taking the statements from the informants. Thus the board had no way of knowing how reliable the informants were and had no real basis on which to resolve the credibility issue against the parolee...."

We do not mean to intimate that the board should have taken testimony from the informants at the hearing and given the parolee the opportunity to cross-examine. What we do mean is that the board should have received the information directly from the informants (although not necessarily in the presence of the parolee), instead of relying solely on the State report. The board could then have reached its own conclusions about the relative reliability of the informants' statements and those of the parolee and his witnesses.

Similarly, the board could then have made its own decision about how realistic were the claims of potential danger to the informants or to State parole officers if their identity was disclosed, instead of placing exclusive reliance on the State report. Thus, we hold that, in relying exclusively on the written synopsis in the State report, which was the only evidence of a parole violation, in the face of the parolee's denial and his presentation of the testimony of other witnesses, the revocation of Satz's parole was fundamentally unfair to him and was a denial of due process of law."

25. Such a modified procedure while ensuring confidentiality of such information and its source, in public interest, also enables the adjudicating authority to test the credibility of the confidential information for the purpose of deciding whether it has to be preferred to the conflicting evidence of the other side. This modified procedure satisfies the minimum requirements of natural justice and also retains the basic element of an adjudicatory process which involves objective determination of the factual basis of the action taken.

26. An authorised restriction saved by Article 19(4) on the freedom conferred by Article 19(1)(c) of the Constitution has to be reasonable. In this statute, provision is made for the notification to become effective on its confirmation by a Tribunal constituted by a sitting High Court Judge, on adjudication, after a show-cause notice to the association, that sufficient cause exists for declaring it to be unlawful. The provision for adjudication by judicial scrutiny, after a show-cause notice, of existence of sufficient cause to justify the declaration must necessarily imply and import into the

inquiry, the minimum requirement of natural justice to ensure that the decision of the Tribunal is its own opinion, formed on the entire available material, and not a mere imprimatur of the Tribunal affixed to the opinion of the Central Government. Judicial scrutiny implies a fair procedure to prevent the vitiating element of arbitrariness. What is the fair procedure in a given case, would depend on the materials constituting the factual foundation of the notification and the manner in which the Tribunal can assess its true worth. This has to be determined by the Tribunal keeping in view the nature of its scrutiny, the minimum requirement of natural justice, the fact that the materials in such matters are not confined to legal evidence in the strict sense, and that the scrutiny is not a criminal trial. The Tribunal should form its opinion on all the points in controversy after assessing for itself the credibility of the material relating to it, even though it may not be disclosed to the association, if the public interest so requires.

27. It follows that, ordinarily, the material on which the Tribunal can place reliance for deciding the existence of sufficient cause to support the declaration, must be of the kind which is capable of judicial scrutiny. In this context, the claim of privilege on the ground of public interest by the Central Government would be permissible and the Tribunal is empowered to devise a procedure by which it can satisfy itself of the credibility of the material without disclosing the same to the association, when public interest so requires. The requirements of natural justice can be suitably modified by the Tribunal to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. This modified procedure would satisfy the minimum requirement of natural justice and judicial scrutiny. The decision would then be that of the Tribunal itself.”

324. The High Court of Andhra Pradesh in **Deendar Anjuman vs. Government of India**, 2001 SCC OnLine AP 663 after applying the test laid down in **Jamaat-e-Islami Hind** (supra) upheld the ban imposed and further held that the entire material available on record itself need not be published or made available to the aggrieved person but what is required is disclosure of reasons and the grounds. Relevant extract of the said judgment is as under:-

*“19. The expression “for reasons to be stated in writing” did not necessarily mean that the entire material available on record itself is to be published or made available to the aggrieved person. What is required is disclosure of reasons. The grounds must be disclosed. The notification issued under sub-section (1) of Section 3 alone is required to be referred to the Tribunal “for the purpose of adjudicating whether or not there is sufficient cause for declaring the association unlawful.” The Tribunal after such reference is required to issue notice to the affected association to show cause, why the association should not be declared unlawful. The Tribunal is required to hold an enquiry in the manner specified in Section 9 and after calling for such further information as it may consider necessary from the Central Government or from the association and then decide whether or not there is sufficient cause for declaring the association to be unlawful. The Tribunal is required “to adjudicate whether or not there is sufficient cause for declaring the association unlawful.” As held by the Supreme Court in *Jamaat-e-Islami Hind v. Union of India*² the Tribunal is required to weigh the material on which the notification under sub-section (1) of Sec. 3 is issued by the Central Government after taking into account the cause shown by the Association in reply to the notice issued to it and by taking into consideration such further information which it may call for, to decide the existence of sufficient cause for declaring the action to be unlawful. The Tribunal is required to objectively determine the points in controversy. The Supreme Court further held that subject to non-disclosure of information which the Central Government considers to be against the public interest to disclose, all information and evidence relied on by the Central Government to support the declaration made by it of an association to be unlawful, has to be disclosed to the association to enable it to show cause against the same. The Tribunal is entitled to ascertain the credibility of conflicting evidence relating to the points in controversy. It is observed by the Supreme Court:*

*“To satisfy the minimum requirements of a proper adjudication, it is necessary that the Tribunal should have the means to ascertain the credibility of conflicting evidence relating to the points in controversy. Unless such a means is available to the Tribunal to determine the credibility of the material before it, it cannot choose between conflicting material and decide which one to prefer and accept. In such a situation, the only option to it would be to accept the opinion of the Central Government, without any means to test the credibility of the material on which it is based. The adjudication made would cease to be an objective determination and be meaningless, equating the process with mere acceptance of the *ipse dixit* of the Central Government. The requirement of adjudication by the Tribunal contemplated under the Act does not permit abdication of its function by the Tribunal to the*

Central Government providing merely its stamp of approval to the opinion of the Central Government. The procedure to be followed by the Tribunal must, therefore, be such which enables the Tribunal to itself assess the credibility of conflicting material on any point in controversy and evolve a process by which it can decide whether to accept the version of the Central Government or to reject it in the light of the other view asserted by the association. The difficulty in this sphere is likely to arise in relation to the evidence of material in respect of which the Central Government claims nondisclosure on the ground of public interest.”

20. It is, therefore, evident that disclosure of all the facts and material available on record subject to the claim of any privilege in this regard by the Central Government is only after the reference of the notification issued under sub-section (1) of Section 3 of the Act to the Tribunal for the purpose of adjudication whether or not there is sufficient cause for declaring the association unlawful. The material available on record may have to be revealed to the association or its members. In a case wherever any privilege is claimed, the Tribunal has to examine the material itself in the manner it considers appropriate, to assess its credibility without disclosing the same to the association. Therefore, there is no requirement to disclose the material itself and publish the same in the notification or provide to the association along with the notification issued in exercise of the power under proviso to sub-section (3) of Section 3 declaring the association to be unlawful with immediate effect. The requirement is disclosure of additional reasons and grounds and not the material. The notification issued in exercise of the power under proviso to sub-sec. (3) of Section 3 cannot be set aside on the ground that the material relied upon for stating the reasons is not communicated to the association concerned declaring it to be an unlawful association with immediate effect. Such notification would become vulnerable only when the reasons are not notified. The record should contain the reasons in writing and the same is required to be revealed and published in the notification or communicated to the association concerned. Such reasons are required to be distinct and different and cannot be the same for imposing ban under Section 3 of the Act. The reasons are required to be communicated but not the entire material. Disclosure of the material is only after reference of the notification issued under Section 3 of the Act to the Tribunal.”

325. The legal position, that emerges, can be succinctly put in the following terms:-

- i. The scheme of the Act and the procedure for inquiry indicated by the Rules framed thereunder contemplates maintenance of confidentiality whenever required in public interest;
- ii. The Tribunal can look into the confidential material without the same being disclosed to the Association or its office-bearers, for the purpose of assessing the credibility of the information and satisfying itself that the same is reliable;
- iii. The Tribunal can devise a suitable procedure for itself for examining and testing the credibility of such material
- iv. The requirement of natural justice can be suitably modified by the Tribunal in the manner it considers appropriate for the purpose of assessing/examining the confidential material/documents, and arriving at a conclusion based on a perusal thereof.

326. Further, the rigors prescribed by the Supreme Court in the case of *S.P. Gupta* (supra) have to be read in the context of the provisions of the UAPA and the Rules framed thereunder. In particular, it needs to be borne in mind that Rule 3(1) of the UAP Rules, 1968 expressly provides that in holding any inquiry under Sub-Section (3) of Section 4 of the UAPA, the Tribunal shall follow “as far as practicable”, the rules of evidence laid down in the Indian Evidence Act. Thus, the rigors that have been contemplated in the context of Section 123 of the Indian Evidence Act, cannot *ipso-facto* be made applicable to these proceedings. The legislative intent in making the provisions of the Evidence Act applicable only “as far as practicable” is evident from the nature of these proceedings. The proceedings before this Tribunal do not contemplate a full-fledged trial; rather the proceedings are in the nature of an “inquiry” as referred to in Section 4(3).

327. Further, the proceedings are time-bound and as laid down by the Supreme Court in the case of *Jamaat-e-*

Islami Hind (supra), an appropriate procedure has to be devised/tailored by this Tribunal for the purpose of its inquiry. As such, any claim seeking privilege has to be assessed in terms of the in-built mechanism as provided under the UAPA and the Rules framed thereunder and the Tribunal is mandated to grant privilege from disclosure where it finds that the disclosure would be against/injurious to public interest. Thus, the nature of the documents has to be assessed by the Tribunal to see whether it contains any sensitive information, disclosure of which would be against public interest.

328. On perusal of the documents submitted by the Central Government in a sealed cover, it is found that the same contains intelligence reports, secret information collected from time to time by the investigating and intelligence agencies, notes/memos prepared by the investigating and intelligence agencies, information revealed on investigation including information as to the clandestine nature of the activities of the concerned association and its office-bearers and linkage of the association and its office-bearers with organizations and individuals outside of India.

329. This Tribunal finds from the perusal of these documents that the disclosure of these documents would be detrimental to the larger public interest and security of the State. One of the documents which is contained in the sealed cover, is a note prepared for consideration of the cabinet committee on security, which contains sensitive information about activities of the Association and its inimical impact on national security. Clearly, the nature of these documents is such that it would be in public interest and in the interest of the security of the State to maintain confidentiality as regard thereto.

330. It is also to be noted that the claim for privilege has been expressly stated by the concerned witness from the Ministry of Home Affairs (PW-19) to be based on a specific approval/direction of the Union Home Secretary (The head of the Department). The said position is also borne out from the relevant official/noting files shared with this Tribunal.

331. In these circumstances, this Tribunal allows the claim for privilege in respect of the documents submitted in a sealed cover by the concerned witness from the Ministry of Home Affairs (PW-19) and by the concerned witness from the NIA (PW-7). Consequently, the Tribunal has proceeded to peruse the said documents, as contemplated in the Judgment of the Supreme Court in ***Jamaat-e-Islami Hind*** (supra) and to assess the credibility thereof and the implications flowing therefrom for the purpose of the present inquiry.

XII. FINDINGS AND CONCLUSION

332. At the outset, it is noticed that in the reply filed on behalf of the association (which is accompanied by an affidavit of Masarat Alam, the chief protagonist of the association). It is has been categorically stated as under:-

"5. That MLJK-MA is a derivative entity of the All Parties Hurriyat Conference ("APHC"), a longstanding political consortium established in the State of Jammu and Kashmir ("J&K") in 1993, advocating for the right to self-determination of the Kashmiri people. The Government of India in the past has consistently engaged in dialogues with the APHC, aiming to devise a comprehensive framework addressing the governance and statehood complexities inherent in Kashmir's intricate historical and political landscape.

6. That from its inception in 2008 to the present day, MLJK-MA has maintained its status as a purely political entity, and has never indulged in or propagated violent or militant means of resistance. Its core mission has consistently revolved around implementing the resolution passed on 05.01.1949 by the United Nations Commission for India and Pakistan ("UNCIP"), which advocated for a plebiscite to determine the accession of the J&K to either India or Pakistan. As such, all of the Organization's endeavors have been dedicated to advancing this cause within J&K. Further, MLJK-MA and its vast majority of supporters have been very vehement in raising their voices against the severe human rights violations in J&K by the security forces against the civilian Kashmiri population, including enforced disappearances, custodial torture, fake encounters, and sexual violence."

333. Thus, it is an admitted case of the association that (i) it advocates for the right to “self-determination of Kashmiri people”; (ii) its core mission is to advocate for plebiscite to determine the accession of J&K to either India or Pakistan; and (iii) it alleges that the security forces in the Jammu and Kashmir have indulged in human rights violation including custodial torture, fake encounters and sexual violence.

334. A perusal of the statutory definition of the “unlawful association” under Section 2(p) of UAPA reveals that it includes any association which (i) has for its object any “unlawful activity” or which encourages or aids person to undertake “unlawful activity”, or of which the members undertake such activities.

335. Unlawful activity, as statutorily defined under Section 2(o) refers to any action: (i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; (ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or (iii) which causes or is intended to cause disaffection against India.

336. It can be seen that by statutory definition itself any action by any association, which questions/disrupts or is intending to disrupt the sovereignty and integrity of India, amounts to an “unlawful activity”. Any association which has for its object any unlawful activity is an unlawful association under Section 2(p) of the UAPA. From the contents of the reply filed on behalf of the association there is not an iota of doubt that the association does not believe in the sovereignty and territorial integrity of India. Admittedly, it advocates for the right of self-determination of the Kashmiri people and seeks a plebiscite to determine the cessation of J&K to either India or Pakistan.

337. In view of this admitted position, the concerned association is by definition an “unlawful association” as defined in the UAPA.

338. The contention that the peculiar background/circumstances of Kashmir legitimises the aforesaid objects/actions of the association, cannot be accepted. The association in J&K cannot be permitted to blatantly indulge in secessionist activities or activities inimical to the territorial integrity of India and claim legal immunity on account of such actions. There is simply no warrant or basis either in UAPA or in the Constitution of India for claiming such immunity.

339. The contention on behalf of the association that seeking of a ‘plebiscite does not amount to an ‘unlawful activity’ within the meaning of Section 2(o) of the UAPA, is thoroughly misconceived. In this regard, it is notable that the UAPA was enacted pursuant to the Constitution (Sixteenth Amendment) Act, 1963 which itself was enacted to impose, by law, reasonable restrictions on the rights mentioned in clauses (2), (3), and (4) of Article 19 of the Constitution of India, in the interest of sovereignty and integrity of India. It was noticed by Delhi High Court in *Union of India vs. Satnam Singh*, AIR 2018 Del 72 that the said Constitution (Sixteenth Amendment) Act was brought about in order to combat secessionist agitations by organizations, including the Plebiscite Front in Kashmir, with the purpose to guard against the freedom to speech and expression being used to assail the territorial integrity and sovereignty of the Union.

340. The Introduction and the Statement of Objects and Reasons of UAPA specifically states as under:-

“Introduction:

The National Integration Council appointed a Committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of recommendations of the Committee the Constitution (Sixteenth Amendment) Act, 1963 was enacted to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India. In order to implement the provisions of 1963 Act the Unlawful Activities (Prevention) Bill was introduced in the Parliament.

Statement of Objects and Reasons.—Pursuant to the acceptance by Government of a unanimous recommendation of the Committee on National Integration and Regionalism appointed by the National Integration Council, the Constitution (Sixth Amendment) Act, 1963, was enacted empowering Parliament to impose, by law, reasonable restrictions in the interests of the sovereignty and integrity of India, on the—

- (i) freedom of speech and expression;
- (ii) right to assemble peaceably and without arms; and
- (iii) right to form associations or unions.

2. The object of this Bill is to make powers available for dealing with activities directed against the integrity and sovereignty of India.”

341. In *Satnam Singh* (supra), it has been observed as under:-

“14. It thus becomes crucial to determine the meaning of the phrase ‘prejudicial to the sovereignty and integrity of India’ used in the Act. Apart from the Act, the phrase finds mention in clauses (2), (3), and (4) of Article 19 of the Constitution of India, where it was added as a ground for restriction on the freedom of expression. This was inserted by the Constitution (Sixteenth Amendment) Act, 1963, in order to combat secessionist agitation and conduct from organizations such as DMK in the South and Plebiscite Front in Kashmir, and activities in pursuance thereof which might not possibly be brought within the purview of the expression ‘security of the State’. It was made to guard the freedom of speech and expression being used to assail the territorial integrity and sovereignty of the Union.

15. It was pointed out that any legislation that is undertaken in this behalf, ought to be comprehensive and effective enough to check indirect devices to carry on such movements, such as the burning of the Constitution of India or the refusal to take the oath of allegiance, or the raising of flags in any way simulating the flag of a foreign State with a view to encouraging feelings of allegiance to such State and gathering people having such allegiance. [Vide Question in Parliament re. hoisting of the Plebiscite Front Flag in Kashmir (Statements, 11.12.64)]. It is to curb the same menace that the Unlawful Activities (Prevention) Act, 1967 was subsequently enacted which under Section 2(o) provides as follows:

“(o) “unlawful activity”, in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),—

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;””

342. The demand for a so-called plebiscite is nothing but a devise or a mechanism to undermine the territorial integrity of India and to encourage secession of part of the territory of India. The attempt on the part of the association to legitimise the same cannot be countenanced in law. Moreover, the views that may have been expressed by authors/political personalities in the years immediately following independence, cannot impart any legal basis to propagate secessionism. There is no gainsaying that the sovereignty and territorial integrity of India is inviolable; the same cannot be rendered violable in the guise of any demand for a so-called ‘plebiscite’ or the like.

343. It is also impermissible for the association to take refuge behind the UN resolutions of 1948 or any international treaty etc. for the purpose of their unlawful activities. The said UN resolution is in a peculiar historical context and susceptible to various interpretations. However, it has been judicially recognized that the sovereignty, unity and territorial integrity of India is inviolable and is a basic feature of Indian Constitution. In the celebrated

judgment of the Supreme Court in the case of *Kesavananda Bharati vs. State of Kerala*, (1973) 4 SCC 225 it has been expressly recognized in one of the majority judgments, rendered by J.M. Shelat and A.N. Grover, JJ., that “the unity and the integrity of the nation” (which includes territorial integrity) is a basic feature of the Indian constitution. The relevant extracts from the said judgment are as under:-

“582. The basic structure of the Constitution is not a vague concept and the apprehensions expressed on behalf of the respondents that neither the citizen nor the Parliament would be able to understand it are unfounded. If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) *The supremacy of the Constitution.*
- (2) *Republican and Democratic form of government and sovereignty of the country.*
- (3) *Secular and federal character of the Constitution.*
- (4) *Demarcation of power between the Legislature, the executive and the judiciary.*
- (5) *The dignity of the individual secured by the various freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.*
- (6) *The unity and the integrity of the Nation.”*

344. In *Arup Bhuyan vs. State of Assam*, (2023) 8 SCC 745, the Supreme Court has also taken note of the fact that the UAPA was enacted pursuant to the amendment brought about in Articles 19(2), (3) and (4) vide the Constitution (Sixteenth Amendment) Act, 1963. It has been noticed therein that the main objective of UAPA is to make powers available for dealing with activities directed against the integrity and sovereignty of India. The relevant observations in the said judgment are as under:-

“80. Thus, the rights guaranteed under Article 19(1)(a) (right to freedom of speech and expression) and under Article 19(1)(c) (Right to form association or unions) are not absolute rights, but are subject to reasonable restrictions as per Articles 19(2) and 19(4) of the Constitution of India. Articles 19(2), (3) and (4) have been amended vide the Constitution (Sixteenth Amendment) Act, 1963 and the words “sovereignty and integrity of India” have been inserted.

81. Therefore, as per Articles 19(2), (3) and (4) nothing in sub-clauses (a), (b) and (c) of clause (1) of Article 19 shall affect the operation of any existing law or prevent the State from making any law insofar as such law imposes reasonable restrictions on the exercises of the right conferred by the said sub-clauses in the interests of sovereignty and integrity of India, the security of State As per Article 19(4) nothing in sub-clause (c) (Right to form Associations or Unions) shall affect the operation of any existing law insofar as it imposes, or prevents the State from making any law imposing, in the interests of sovereignty and integrity of India or public order or morality, reasonable restrictions on the exercise of the right conferred by the said sub-clause.

82. At this stage the Statement of Objects and Reasons for amending Articles 19(2), (3) and (4) are required to be referred to and considered.

83. The Statements of Objects and Reasons appended to the Constitution (Sixteenth Amendment) Bill, 1963 which was enacted as the Constitution (Sixteenth Amendment) Act, 1963 reads as under:

“Statement of Objects and Reasons

The Committee on National Integration and Regionalism appointed by the National Integration Council recommended that Article 19 of the Constitution be so amended that adequate powers become available for the preservation and maintenance of the integrity, and sovereignty of the Union. The Committee were further of the view that every candidate for the membership of a State Legislature or Parliament, and every aspirant to, and incumbent of, public office should pledge himself to uphold the Constitution and to preserve the integrity and sovereignty of the Union and that forms of oath in the Third Schedule to the Constitution should be suitably amended for the purpose. It is proposed to give effect to these recommendations by amending clauses (2), (3) and (4) of Article 19 for enabling the State to make any law imposing

reasonable restrictions on the exercise of the rights conferred by sub-clauses (a), (b) and (c) of clause (1) of that article in the interests of the sovereignty and integrity of India.”

84. The UAPA, 1967 has been enacted in exercise of powers conferred under Articles 19(2) and (4) of the Constitution of India. At this stage, it is required to be noted that exceptions to the freedom to form associations under Article 19(1) was inserted in the form of sovereignty and integrity of India under Article 19(4), after the National Integration Council (“NIC”) appointed a Committee on National Integration and Regionalisation. The said Committee was to look into the aspect of putting reasonable restrictions in the interests of the sovereignty and integrity of India. Pursuant to the acceptance of the recommendations of the said Committee, the Constitution (Sixteenth Amendment) Act, 1963 came to be enacted to impose by law, reasonable restrictions in the interests of sovereignty and integrity of India. In order to implement the provisions of the 1963 Act, the Unlawful Activities (Prevention) Bill was introduced in Parliament.

85. The main objective of the UAPA is to make powers available for dealing with activities directed against the integrity and sovereignty of India. It is also required to be noted that pursuant to the recommendation of the Committee on National Integration and Regionalisation appointed by the National Integration Council Act on whose recommendation the Constitution (Sixteenth Amendment) Act, 1963 was enacted, UAPA has been enacted. It appears that the National Integration Council appointed a Committee on National Integration and Regionalisation to look into, inter alia, the aspect of putting reasonable restrictions in the interests of sovereignty and integrity of India and thereafter the UAPA has been enacted. Therefore, the UAPA has been enacted to make powers available for dealing with the activities directed against integrity and sovereignty of India.”

345. **In Re: Article 370 of the Constitution**, 2023 SCC OnLine SC 1647, it has been specifically noted that on 26 January 1950, when the Constitution was adopted, the State of Jammu and Kashmir became an integral part of the territory of India. The said judgment also clearly noted that any modification in the relationship of the State of Jammu and Kashmir with the Union of India would have to be brought about within the framework of the Constitution of India and that Constitution alone. It has been noted as under:-

“164. This is a reiteration of the understanding of the members of the Constituent Assembly of Jammu and Kashmir that accession to India was complete and that sovereignty was surrendered.

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172. These provisions are significant. The power of amending the State Constitution which was entrusted to the Legislative Assembly (subject to the assent of the Governor) had thus three major qualifications : firstly, the position that the State of Jammu and Kashmir is and shall be an integral part of the Union of India was unamendable; secondly, the executive and legislative domain of the State which depended upon the domain entrusted to Parliament under the provisions of the Constitution of India over which it would make laws for the State of Jammu and Kashmir was unamendable by the State Legislative Assembly; and thirdly, the provisions of the Constitution of India as applicable in relation to the State of Jammu and Kashmir were unamendable by the State Legislative Assembly. These restraints which were imposed on the amending power of the State Legislative Assembly made it abundantly clear that Jammu and Kashmir being an integral part of the Union of India was a matter of permanence and unalterable. Moreover, any modification in the relationship of the State of Jammu and Kashmir with the Union of India would have to be brought about within the framework of the Constitution of India and that Constitution alone.

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339. On 26 January 1950, when the Constitution was adopted, the State of Jammu and Kashmir became an integral part of the territory of India. The mandate of Article 1 is that “India that is Bharat shall be a Union of States”. The States and their territories would be those specified in Parts A, B and C of the First Schedule. The State of Jammu and Kashmir was a Part B State on the date of the adoption of the Constitution. With the adoption of the Seventh Amendment to the Constitution which obliterated the distinction between Parts A, B and C States, Jammu and Kashmir became a State in the Union of States. In other words, Article 370 of the Constitution read together with Article 1 leaves no manner of doubt that the integration of Jammu and Kashmir as a part of the nation, which in itself was a Union of States was complete. Any interpretation of Article 370 cannot postulate that the integration of Jammu and Kashmir with India was temporary.

Thus, the so called “core mission” of the association (as referred to in para 6 of its reply) is in the teeth of the fundamental fact that Jammu and Kashmir is an integral part of India and this is a matter of “permanence and unalterable”

346. As such, the contentions made on behalf of the association (as incorporated in the written submissions filed on 27.05.2024) to justify its activities, which call into question the fact that Jammu & Kashmir is an integral and inseparable part of India, cannot be countenanced. Also, from the nature of activities of the concerned association, as brought out by the Central Government, it appears quite evident that the association functions virtually as a supplicant or an agent of inimical elements from across the border, who are desirous of fermenting trouble in the region of Jammu & Kashmir. This is also evident from the nature of propaganda/slogans indulged in by the association, which seek to glorify Pakistan and ferment disaffection against India. The same is also evident from the vitriolic vilification campaign against the security forces who are operating in Jammu & Kashmir in extremely trying and challenging circumstances. The reply filed on behalf of the association itself reveals the diatribe against the security forces in the Jammu and Kashmir; it is stated therein that security forces are responsible for “enforced disappearances, custodial torture, fake encounters and sexual violence”. No material whatsoever has been placed on record by the association in support of these very serious allegations.

347. Such vitriolic attack against the security forces in Jammu and Kashmir which are functioning in extremely challenging circumstances, by itself, is intended to cause “disaffection against India”. In this regard, it is noticed that while defining “unlawful activity”, Section 2(o) of the UAPA specifically includes any action which causes or is intended to cause disaffection against India.

348. Thus, given the objectives of the association and the admitted nature of its activities, it is apparent that the association in question eminently qualifies to be declared as an unlawful association, as has been done vide the notification dated 27.12.2023.

349. It is also notable that neither in the reply filed on behalf of the association, nor during the oral arguments, and despite a specific query from this Tribunal, has there been a positive assertion that the proscribed association accepts the supremacy of the Constitution of India or the sovereignty and territorial integrity of India. This lends further credence to the inevitable inference that flows from the above extracted portion of the reply filed on behalf of the association.

350. Quiet apart from the above, voluminous evidence have been adduced by the Central Government to demonstrate the nature of the activities of the association. Evidence have been adduced to place on record the said activities which are subject matter of the following FIRs registered against proscribed association:-

S. No.	Name of PW	Incident/Gist of Evidence	Case Crime No.	Exhibit	161/164 Cr.P.C Statements
1.	Sh. Ashaq Hussain, SDPO, Zakoora (PW-1)	On 06.05.2006 Leaders of Hurriyat conference entered in the premises of KU raised Anti-National Slogans and addressed the students of KU motivating them to stand against the integrity and sovereignty of India and in favour of Pakistan. They also asked students to hold protest rallies.	FIR No. 34/2006 u/s 10 CLA Act, 13 UAPA	PW-1/1 to PW1/14 – Copy of FIR, Chargesheets filed in FIR No.34/2006 and 60/2010 and copies of statements of witnesses recorded u/s 161/164/164ACr.P.C.	Both 161 and 164 statements.

		<p>Unruly mob headed by Masrat Alam Bhat, Mehraj - ud- Don Kalwal, Suhail Poison, Saqib Banday etc, are protesting within the premises of Shrine Hazratba against Sovereignty/Integrity of India and affiliation with J&K State. They were raising anti national slogans like "hum Kya Chahtay, Go back India Go back" and also attacked the armed police personnel posted for the protection of shrine, pelted stones upon them, ransacked the Guard hut/wireless centre and set ablaze the uniform, bedding, clothing and weapons allotted to them</p>	<p>FIR No. 60/2010 u/s 148, 336, 436, 153, 153A, 332, 353,427 RPC, 13 UAPAand 3 PDPP Act</p>	<p>PW-1/1A to PW1/14A – Translated copy of FIR, Chargesheets filed in FIR No.34/2006 and 60/2010 andcopies of statements of witnesses recorded u/s 161/164/164A Cr.P.C.</p>	
2.	Sh. Junaid Wali, SDPO, M.R. Gunj (PW-2)	<p>Gathering headed by Syed Ali Shah Geelani, GH Nabi Sumji, Mohammad Ashraf khan and during their address they said that accession of state with India is temporary and by these addressee anti Govt. sentiments got provoked and, in the rally, Masrat Alam, Firdous Ahmad Shah, Mustaq Ahmad Sofi and other invited people there to raise slogans against India. Further praised the terrorists' organizations and also raised slogans in favour of Pakistan</p>	<p>FIR No.70/2007 u/s 121A and 13 UAPA</p>	<p>PW-2/1 to PW2/7 – Copy of FIR, copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. and seizure memo</p> <p>PW-2/1A to PW2/6A – Translated copy of FIR and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C.</p>	Both 161 and 164 statements.
3.	Sh. Mohd. Ashrif, SDPO, Saddar (PW-3)	<p>Prisoners called their parents to raise loudly anti national slogans also they broke the main gate of subjail and entered inside the premise also including Masrat Alam as the prisoner.</p> <p>Masrat Alam and other jail associates started slogans in the jail for shifting of their lodgment. They raised anti national slogans.</p> <p>Mohammad Ashraf Sherai along with Masrat Alam</p>	<p>FIR No. 238/1995 u/s 147, 341, 153ARPC</p> <p>FIR No. 160/1996 u/s 148, 336 of RPC</p> <p>FIR No.284/1999 u/s 147, 341, 153Aof</p>	<p>PW-3/1 to PW3/16 – Copy of FIR and copies of statements of witnesses recorded u/s 161/164/164 A Cr.P.C.</p> <p>PW-3/1A to PW3/16A – Translated copy of FIR and copies of statements of witnesses recorded</p>	Both 161 and 164 Statements

		Bhat tried to proceed towards Srinagar city from Rambagh in shape of a procession and raised anti national slogans due to which traffic movement was blocked. They harassed the general public. Masrat Alam, Bashir Ahmed @ Peer Saifullah have pasted some posters on the walls (Go India Go Back) and burnt National/State Flags at Parayora.	RPC FIR No. 128/2010 u/s 121A, 124A, 505, 506	u/s 161/164/164A Cr.P.C.	
4.	Sh. Shabir Ahmad Khan SP, South Zone (PW-4)	One Hriday Nath Wanchoo was assassinated by gunmen at Balgarden in Srinagar; renowned for documenting abuse of human rights. Posters were observed pasted on the walls, electric poles with slogans such as "Go back India Go back" at Zaindear Mohalla in the vicinity of Masrat Alam. Mohammad Muzaffar Mirza s/o Gh. Mohammad r/o Zainakadal and others of banned organization Jamaatul-Mujahideen under the close supervision of Gh. Rasool Shah @ General Abdullah (Commander) are active in J&K particularly in valley. The motive of this banned organization is to separate J&K from the India and instigating the youths of valley to indulge in militancy by taking illegal weapon. Masrat Alam through his associates is indulging in the activities that are prejudicial to the security and sovereignty of India	FIR No.204/1992 u/s 302 RPC, 3(1) TADA(P) & 3/25 IAAct FIR No.74/2010 10 CLA, 13 UAPA and 153B RPC FIR No.02/2001 u/s 10 CLA act, 13UAPA and 121, 122 RPC FIR No.35/2022 u/s 124A, 506 IPC	PW-4/1 to PW4/15 – Copy of FIR, Chargesheets filed in FIR No.74/2010 and 02/2001 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. PW-4/1A to PW4/15A – Translated copy of FIR, Chargesheets filed in FIR No.74/2010 and 02/2001 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	161 statement
5.	Sh. Mohd. Ameen Bhat D.S.P., Kupwara (PW-5)	A mob came out from Jamia Masjid Kupwara headed by Hurriyat Activist Peer Saifullah and Abdul Rehman Lone of Muslim League were raising anti national slogans. During their speech they were provoking	FIR No. 174/ 2009 u/s 13 UAPA and 120B, 153A RPC	PW-5/1 to PW5/3 – Copy of FIR and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	164A statements

		people to wage war against India and ceding Jammu and Kashmir from the Union of India.		PW-5/1A to PW5/3A — Copy of FIR and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	
6.	Sh. Zaheer Abbas SDPO, Nehru Park (PW-6)	Masrat Alam Bhat general secretary Hurriyat (G) to provoke general masses for agitation/separation from India.	FIR No.59/2010 u/s 13, 18 UAPA	PW-6/1 to PW6/6 – Copy of FIR, Chargesheet filed in FIR No.59/2010 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. PW-6/1A to PW6/6A — Copy of FIR, Chargesheet filed in FIR No.59/2010 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	164A statements
7.	Sh. Braj Bhushan Pathak D.S.P., NIA (PW-7)	Masrat Alam @ Masrat Alam Bhat (A-16) was arrested on 04.06.2019 in the instant case. He was involved in conspiracy of insurgency and funding for unrest in Jammu and Kashmir and also inciting people to hold protests, hartals and complete shutdowns. He started an initiative ‘Kashmir Chod do Tehreek’, issued a calendar and publicized it on TV to instigate Kashmiris for secession. He was also involved in pro-Pakistan Sloganeering, participated in protests which lead to killing of soldiers and civilians and destruction of public property	RC-10/2017/NIA/DLIU/S 120B, 121 &121A of the IPC and Sec. 13, 16, 17, 18, 20,38, 39 & 40 of UAPA, 1967	PW-7/1 to PW7/13 – Copy of FIR, Chargesheet filed in FIR, Recovery Memo, CFSL Report, Search Memo, arrest memo, supplementary chargesheet, charge order and copies of statements of witnesses recorded	Protected witnesses' statements

8.	Sh. Mayank Arora, Assistant Director, ED (PW-8)	Based on NIA FIR No. RC-17, Enforcement Directorate initiated PMLA investigation vide ECIR against Saeed and others. Further supplementary PC arraingning four more accused persons including Masrat Alam was filed. Investigation revealed that Masrat Alam received foreign funds to the tune of Rs. 10,00,000/- through Hawala conduit Zahoor Ahmad Shah Watali. Masrat Alam has been arraigned as accused in the 1st Supplementary Chargesheet filed on 09.01.2023 and was taken on 10.01.2023.	ECIR No. 03/DLZOII/2017 FIR No. 122/2005 dated 26.08.2005 U/s120B, 121, 121A,122, 123 IPC, U/s 4& 5 of the Explosive Substances Act, U/s17 & 23 of UAPA &U/s 25 of Arms Act	PW-8/1 to PW8/3	
9.	Sh. Sandeep Bhat SP, Bandipora (PW-9)	<p>Accused persons delivered anti-national speech against the integrity/sovereignty of the country/raised Pakistan zindabad slogans etc. at Markundal.</p> <p>Gathered the general public at Main Chowk Hajinand were provoking the general public to boycott the elections and were also chanting anti-India Slogans thus causing threat to the sovereignty and integrity of India. The accused persons were also chanting pro-Pakistan Slogans.</p> <p>Gathered the general public at Paray Mohallah Hajinand were provoking the general public to boycott the elections and were also chanting anti-India slogans thus causing threat to the sovereignty and integrity of India. The accused persons were also chanting pro-Pakistan slogans.</p> <p>Pertains to killing of a Police Sub Insp. Altaf Dar on October 7, 2015. Altaf Dar of SOG and other police officers where fired upon while they were chasing</p>	<p>FIR No.53/2015 u/s 188 RPC and 13UAPA</p> <p>FIR No.17/2014 u/s 132 PRA and 13UAPA</p> <p>FIR No.26/2014 u/s 13 UAPA and 132 PRA Act</p> <p>FIR No.23/2015 u/s 302, 149, 427, 307, 34, 120B IPC and 16, 18 UAPA</p>	<p>PW-9/1 to PW9/16 – Copy of FIRs, Chargesheets filed in FIR No.26/2014, 23/2015, 53/2015 and 17/2014 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C</p> <p>PW-9/1A to PW9/16A – Copy of FIR, Chargesheets filed in FIR No.26/2014, 23/2015, 53/2015 and 17/2014 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C</p>	Both 161 and 164 statements

		terrorists. Altaf Dar succumbed to fire-arm injuries			
10.	Sh. Saqib Gani D.S.P., Budgam (PW-10)	That on return of Syed Ali Shah Geelani from Delhi and other Hurriyat activist gathered at Hyderpora and raised slogans against India	FIR No.92/2015 u/s 147, 341, 336, 427, 120B, 121, 124A RPC and 13 UAPA	PW-10/1 to PW10/6 – Copy of FIRs, Chargesheets filed in FIR No.92/2015, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. PW-10/1A to PW10/6A – Copy of FIR, Chargesheets filed in FIR No.92/2015, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	161 statements
11.	Sh. Sarfaraz Bashir SDPO, Sopore (PW-11)	Pertains to stone pelting upon the security forces by a mob at Saidpora Sopore and instigation youth in the area by some activists including Farooq Ahmed Tawheed to pelt stones on security forces and police. Masrat Alam Bhat delivered anti-national speeches/slogans at the residence of Mohammad Ramzan Shalla at Arampora, Sopore to instigate the masses of the area to act against the establishment and the government of India. He also tried to create wedge between different communities and disrupt peace and tranquillity in the area.	FIR No.69/2020 u/s 13 UAPA FIR No.68/2015 u/s 153A, 504 RPC	PW-11/1 to PW11/8 – Copy of FIR, Chargesheets filed in FIR No.69/2020 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. PW-11/1A to PW11/8A – Copy of FIRs, Chargesheets filed in FIR No.69/2020 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	161 statements
12.	Sh. Hari Prasad SDPO, Kothibagh (PW-12)	Masrat Alam Bhat has circulated a video CD in which he is not only trying to spread disaffection among the security forces working	FIR No.52/2010 u/s 124, 506 RPC and 13 UAPA	PW-12/1 to PW12/14 – Copy of FIRs, Chargesheets filed in FIR	161 statements

		<p>in J&K state and S/F Personnel to quit J&K state etc.</p> <p>Masrat Alam Bhat was produced by the SHO P/SNageen before the Hon'ble Court of Law for acquiring remand and was released in open court while coming out from the court he threatened the SHO P/S Nageen of dire consequences and also used provocative language against the sovereignty of the state as well as union of India.</p> <p>Masrat Alam in shape of mob along with people took to road and raised slogans against country during hartal call given by Hurriyat leader. The unruly mob attacked the police when the police asked them to disperse etc.</p>	<p>FIR No.07/2010 u/s 121A and 13 UAPA</p> <p>FIR No.12/2006 u/s 148, 188, 307, 332, 353, 427 RPC</p>	<p>No.07/2010, 12/2006 and 52/2010 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C.</p> <p>PW-12/1A to PW12/14A – Copy of FIRs, Chargesheets filed in FIR No.07/2010, 12/2006 and 52/2010 and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C</p>	
13.	Sh. Mohd. Nawaz Khandey D.S.P., Pulwama (PW-13)	<p>Pertains to cordon and search by 50 RR and SOG at Ahanga Mohalla Kakpora wherein youth pelted stones upon security forces in order to help terrorists to flee.</p> <p>Mohd Rafiq Ganie of Muslim League entered Jamia Masjid Pulwama and gave a provocative speech against security forces and also provoked people for stone pelting and attacking security forces. Deliberating upon the recent happenings in Shopian and Qalampora, he provoked the people against the country and led a procession after Nimaz towards Rajpora Chowk while chanting slogans in favour of Azadi and pelted stones on security forces and police besides damaged some vehicles</p>	<p>FIR No.46/2016 u/s 307, 148, 149, 336 of RPC and 7/27of Arms act</p> <p>FIR No.43/2010 u/s 148, 336, 427, 153A of RPC</p>	<p>PW-13/1 to PW13/8 – Copy of FIRs, Chargesheets filed in FIR No.43/2010, 46/2016, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C.</p> <p>PW-13/1A to PW13/8A – Copy of FIRs, Chargesheets filed in FIR No.43/2010, 46/2016, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C</p>	161 statements
14.	Sh. SajadAhmad SP, Hqrs, Anantnag (PW-14)	Pertains to spreading terrorism by APHC activists by instigating youth through provocative speeches during the funeral of a terrorist.	FIR No.31/2018 u/s 120B of RPC and13 UAPA	PW-14/1 to PW14/6 – Copy of FIRs, Chargesheets filed in FIR No.31/2018,	161 statements

				seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. PW-14/1A to PW14/6A – Copy of FIRs, Chargesheets filed in FIR No.31/2018, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	
15.	Sh. Syed Yasir Qadri Add. SP, Baramulla (PW-15)	<p>Case registered against Masrat Alam and other activists of Hurriyat for delivering anti national speech at Bus stand Uri.</p> <p>During Palhalan Chalo call given by separatists, an unruly mob at NHW Singhpora pelted stones upon deployed nafri and security forces.</p> <p>Instigating of terrorists and youth for carrying out different kinds of terrorist activities in town Baramulla by Masrat Alam while detained in jail, he also instigated people for anti national activities through different people who come to meet him in jail.</p> <p>Pertains to unlawful activities carried out by someanti-national elements by way of mobile phones in sub-jail which they have illegally obtained.</p> <p>Anti national publication by way of posters by some antinational elements, (Masrat Alam), which is a threat to the integrity and sovereignty of India and had appealed people to join the path of violence</p>	<p>FIR No.69/1999 u/s 13 UAPA and 188 of RPC</p> <p>FIR No.215/2010 u/s 148, 149,188,307, 427 RPC</p> <p>FIR No.258/2016 u/s 13 UAPA</p> <p>FIR No.52/2017</p> <p>FIR No.137/2013 u/s 13 UAPA and section 506, 120 of RPC</p>	<p>PW-15/1 to PW-15/33 – Copy of FIRs, Chargesheets filed in FIR No.69/1999, 215/2010 and 137/2013, seizure memos, arrest memos and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C</p> <p>PW-15/1A to PW-15/33A – Copy of FIRs, Chargesheets filed in FIR No.69/1999, 215/2010 and 137/2013, seizure memos, arrest memos and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C</p>	161 statements
16.	Sh. Satish Kumar	Syed Ali Shah Geelani and Masrat Alam along with their	FIR No.140/1999 u/s 188 RPC, 13	PW-16/1 to PW-16/10 –	161 statements

	SDPO, Handwara (PW-16)	associates provoked the general public to boycott elections etc Hurriyat leader Syed Ali Shah Geelani violated the curfew, provoked the general public called slogans and delivered speech against the sovereignty of the country.	UAPA FIR No.141/2000 u/s 188 RPC and 13UAPA	Copy of FIRs, Chargesheets filed in FIR No.140/1999 and 141/2000, photograph and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C PW-16/1A to PW-16/10A – Copy of FIRs, Chargesheets filed in FIR No.140/1999 and 141/2000, photograph and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	
17.	Sh. Mohd. Saleem Bhat D.S.P., Kralgund (PW-17)	Hurriyat Leader of Muslim League Masrat Alam Bhat proceeded at Lalbugh and Ganapora along with his associates and called of meeting of public, after that came to national highway Ganapora and raised anti national slogans. Abdul Ahad Parra and other activists played vital role during unrest 2010 in disrupting the peace in the area by way of instigating/provoking the youth of the area.	FIR No.30/2015 u/s 13 UAPA and 147, 124A RPC FIR No.52/2010 u/s 148, 336, 332 RPC	PW-17/1 to PW-17/8 – Copy of FIRs, Chargesheets filed in FIR No.30/2015 and 52/2010, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C. PW-17/1A to PW-17/8A – Copy of FIRs, Chargesheets filed in FIR No.30/2015 and 52/2010, seizure memo and copies of statements of witnesses recorded u/s 161/164/164A Cr.P.C	161 & 164-A statements

351. It can be seen that Masarat Alam, the chief protagonist of the association in question, is accused in most of

these FIRs and in some FIRs there are other accused as well. Gist of the slogans/speeches which are subject matter of some of the FIRs is as under:-

S. No.	FIR	SLOGANS/SPEECHES	Evidence of PW.
1.	FIR NO. 34/2006 dated 06.05.2006.	“Pakistan zindabad” “Jive jive Pakistan” “Hindustan Hi Hi”	PW-1
2.	FIR NO. 60/2010 dated 11.09.2010	“Go India go back, “We want freedom”	PW-1
3.	FIR NO. 70/2007 dated 22.04.2007.	“Jio Jio Pakistan” “Pakistan se rishta kya laila ha illa”	PW-2
4.	FIR NO. 160/1996 dated 31.03.1996	“HM zindabad, Hindustan hai hai” “Pakistan Zindabad”	PW-3
5.	FIR NO. 284/1999 dated 15.09.1999.	“Hindustan Hai Hai” “We want freedom” “Yaha kya chalega Nizam E Mustafa” “Bharti kutto vapas jao”	PW-3
6.	FIR NO. 128/2010 dated 27.06.2010	“Go India go back”	PW-3
7.	FIR NO. 74/2010 dated 27.06.2010	“Go India go back”	PW-4
8.	FIR NO. 26/2014 dated 19.03.2014	“Pakistan Zindabad”	PW-9
9.	FIR NO. 17/2014 dated 07.03.2014	“Pakistan Zindabad”	PW-9
10.	FIR NO. 43/2010 dated 29.01.2010	“Freedom from India”	PW-13
11	FIR NO. 140/1999 dated 08.09.1999	“Hindustan murdabad, Pakistan Zindabad” “Hum Kya Chahtay Azadi”	PW-16
12.	FIR NO. 141/2000	“Hindustan murdabad, Pakistan Zindabad” “Hum Kya Chahtay Azadi”	PW-16
13.	FIR NO. 52/2010 dated 28.06.2010	“Go India go back, Kashmir chodhdou”	PW-17

352. From the various FIRs and the charge-sheets which have been filed therein, it is evident that the proscribed association, through its chief protagonist have been propagating secessionism through various actions which are subject matter of the aforesaid FIRs.

353. The contention on behalf of association to the effect that the activities of the prime accused in most of the FIRs viz. Masarat Alam cannot be ascribed to the association is misconceived. It is undisputed that Masarat Alam is the chief protagonist of the concerned association and is authorized to act on behalf of the association.

354. In light of the submission that the activities of Masarat Alam must not be ascribed to the association, a specific query was posed by the Tribunal as to whether the association was disclaiming/disowning the activities of Masarat Alam. In response, the learned counsel for the association was ambivalent. On the basis of the voluminous material on record, it is quite evident that Masarat Alam is but an alter ego of the association. Even the reply filed on behalf of the association is accompanied by an affidavit of Masarat Alam.

355. Learned counsel for the association has also vehemently contended that no reliance can be placed on the aforesaid FIRs or the charge-sheets filed therein, inasmuch as the entirety of evidence led by the Central Government is based on the affidavits of “supervisory officers” who had not conducted the investigations themselves. Further, it is strenuously contended that none of these officers had recorded the statements made under Sections 161 and 164 of Cr.P.C. Therefore, it is urged that the evidence affidavits filed on behalf of the Central Government are not only inadmissible on account of hearsay but also fail to meet the personal knowledge test laid down in *Jamaat-e-Islami*

Hind (supra). It is further contended that the investigation in these cases have been inordinately delayed/protracted and further that the incidents alleged cannot be attributed to the members of MLJK-MA. It is submitted that all the FIRs have been lodged at the instance of the State officers. Further, in investigation no independent witnesses have come forward and only the testimony of the officers have been recorded. It is further contended that the FIRs do not mention the specific slogan that would tantamount to promoting sucessionism as defined in Section 2(i) of the UAPA.

356. The aforesaid contentions of learned counsel for the association are wholly devoid of merit. The evidence that is required to be adduced by the Central Government in these proceedings is not intended to establish the guilt or otherwise of the accused in the various FIRs which have been referred to in the affidavits filed on behalf of the Central Government. The limited purpose is to place on record the documents/material which is relevant for the purpose of considering whether or not there is sufficient cause for declaring the association to be unlawful as defined in the Section 2(p) of the UAPA.

357. The entire record pertaining to the relevant FIRs has been placed on record to demonstrate the nature of activities of the concerned association and/or its members. The purport of the depositions of the various supervisory officers is to place on record the relevant material to enable the proscribed association to cross-examine the concerned witnesses/supervisory officers who have produced the relevant material and to enable the concerned association to refute the relevancy of the material sought to be relied upon for the purpose of these proceedings. The exercise is not akin to conducting a mini-trial as regards the sufficiency of the material/evidence for the purpose of establishing the guilt or otherwise of the accused in the concerned FIRs. In this backdrop, the attempt made by the learned counsel for the association to seek to highlight the so called infirmities/shortcomings in the case as set up by the prosecution in those FIRs cannot be dealt with or pronounced upon in these proceedings. The same would necessarily be gone into by the concerned Trial Court. Suffice it to say, the purport of placing on record the aforesaid FIRs is to show, for the purpose of these proceedings, the nature of the activities of the association.

358. In the above conspectus and keeping in mind the nature of the present proceedings, I am unable to accept the contentions of the learned counsel for the association that the evidence sought to be adduced by the Central Government in these proceedings is tainted on account of the fact that the concerned investigating officers whose statements under Section 161 Cr.P.C were recorded, themselves did not file the concerned affidavit/s and/or on the basis that the evidence adduced is in the nature of heresay. I have already noticed above that the strict rules of evidence do not apply to the proceedings before this Tribunal. Furthermore, the scope of scrutiny of the material relied upon by the Central Government is not akin to a criminal trial as held in para 26 of **Jamaat-e-Islami Hind** (supra). For the purpose of these proceedings, statements recorded under Section 161 Cr.P.C is in the nature of relevant material and liable to be considered, in terms of the dicta laid down by the Supreme Court in **Khatri** (supra), **Vinay D. Nagar** (supra) and **Jamaat-e-Islami Hind** (supra).

359. Keeping in mind the aforesaid, I find that the evidence adduced by the various officers of the Jammu & Kashmir is relevant for the purpose of this proceedings; the same clearly brings out the nature of the activities of the concerned association. The various FIRs and the chargesheets filed therein bring out that the association in question, through its chief protagonist, Masarat Alam, has been indulging in secessionist activities, preaching disaffection against the Indian state, openly organising protest/s, raising slogans in which the status of Jammu & Kashmir as integral part of India is disputed. The incidents with regard to which voluminous evidence have been adduced, *inter alia* involves:-

- i. Raising Anti-India and Pro-Pakistan slogans (evidences of PW-1, PW-2, PW-3, PW-4, PW- 9, PW-13, PW-16, PW-17);
- ii. Delivering of provocative speeches to general public instigating the public to stand against the sovereignty of

- India and preaching disaffection against India (evidences of PW- 5, PW-6, PW-9, PW-10, PW-11, PW-12, PW-14, PW-15, PW-16, PW-17);
- iii. Delivering of provocative speeches to general public to wage war against India and to cede J&K from India (evidence of PW-5);
 - iv. Attacking police personnel/ security forces and instigating the general public to pelt stones on the police personnel/ security forces (evidences of PW-1, PW-11, PW-15);
 - v. Pasting and circulating of Posters with anti-India and pro-Pakistan contents such as 'Go India Go Back' (evidences of PW-3, PW-4, PW-15);
 - vi. A video CD circulated by Masarat Alam wherein he is trying to spread disaffection among the security forces working in state of J&K(evidence of PW-12); and
 - vii. Encouraging boycott of elections (evidences of PW- 9, PW-16).

360. Quite apart, and independent of the above, the nature of the activities of the concerned association also becomes clear from the details which have become available pursuant to investigation conducted by NIA in NIA Case no. RC-10/207/NIA/DLI. This case pertains to the terrorist and secessionist activities that have rattled Jammu and Kashmir since late 1980's and early 1990's. Various terrorist organizations such as Lashkar-e-Toiba (LeT), Hizub-ul-Mujahideen (HM), Jammu & Kashmir Liberation Front (JKLF), Harkat-ul-Jihad-al-Islami, Jaish-e-Mohammad (JeM) etc. unleashed a spate of violence in the valley by attacking civilians as well as the security forces with the active support of the Inter-Services Intelligence (ISI) of Pakistan. Pakistan has not only been training the terror groups but also supporting them financially and diplomatically. Amidst the violent activities of the terrorists and mass exodus of the minority community from Jammu and Kashmir, the All Parties Hurriyat Conference (APHC) was formed as a conglomerate of 26 political/social/religious organizations in the year 1993 which gave a political front to the secessionist activities.

361. The investigation in the NIA case uncovered a conspiracy involving various terrorist organizations, such as JKLF, HM, and LeT, in collusion with secessionist groups comprising the APHC, funded by Pakistan and its agencies. The aim was to wage war against the Indian Government and advocating for the secession of Jammu & Kashmir from India. APHC, initially formed as a political front, was found to be actively involved in inciting violence and unrest in Kashmir to further their secessionist agenda. Pursuant to the investigation, a chargesheet dated 18.01.2018 was filed before the NIA Special Court, New Delhi - against 12 accused persons (who are leaders in APHC), including two designated terrorists, based in Pakistan, as absconders.

362. A supplementary chargesheet in the NIA Case no. RC-10/2017/NIA/DLI was filed on 04.10.2019 against Masarat Alam and other accused individuals. The said supplementary chargesheet records as under:-

"17.5 Accused Masarat Alam (A-16)

17.5.1 *Accused Masarat Alam (A-16), aged 48 years, son of late Abdul Mazeed Bhat resident of Zaindar Mohallah, Habba-Qadal, Srinagar is one of the most virulent hate-mongers, provoking and inciting youth of Jammu & Kashmir, at the instance of Pakistani agencies, in the most vitriolic ways to rebel and wage war against the Indian State in order to secure secession of Jammu & Kashmir from the Union of India.*

17.5.2 *On the basis of the facts that came on record during further investigation, his house was searched on 26.02.2019 and incriminating material including documents and electronic items were seized. On 04.06.2019m accused Masarat Alam, was arrested in the instant case, being a part of the conspiracy related to secessionist and terrorist activities in the State of Jammu & Kashmir. The seized electronic devices were sent to C-DAC, Thiruvananthapuram for analysis and expert opinion thereof, which has been received. A video retrieved (The Bleeding Paradise) in the reports received from CDAC establishes his anti-India and pro-terrorism stance.*

17.5.3 Investigation reveals that in 1993, accused Masarat Alam (A-16) joined Muslim League, on the inspiration of the then Chairman of Muslim league (Mushtaq Ahmad Bhat) to fight for the freedom of Kashmir. Due to illegal activities of Muslim League, he was arrested in 1993 and remained in jail till 1997. After release from jail, he became the General Secretary of Muslim League and revived the defunct Muslim League party. In the year 1998, with his efforts, the Muslim league party became a part of All Party Muslim Conference (Geelani Faction) and he started taking part in speeches, protests, etc. on the directions of Syed Ali Shah Geelani.

17.5.4 In the year 1999, at the time of Parliamentary elections, anti-election campaign was started by the APHC. Accused Masarat Alam (A-16) along with SAS Geelani, Yasin Malik and other Hurriyat leaders were in the fore-front of this anti-election campaign. They were all arrested by J&K Police for disrupting the democratic process in the month of September, 1999.

17.5.5 Investigation establishes that after induction of Muslim League in All Parties Hurriyat Conference, accused Masarat Alam (A-16) became close with SAS Geelani and took an active part in the agitations and processions organized by APHC(G) in the year 2008 on Amarnath Land dispute, and vitiated peace and harmony of the region through his vicious and vitriolic speeches. As a result, SAS Geelani gave him the responsibility of acting General Secretary of APHC(G).

17.5.7 Accused Masarat Alam (A-16) was master-mind of 'Quit Kashmir Movement' and issued calendars of protest and led violent demonstrations in the Kashmir Valley. He would instigate the youth to come out on streets, raise pro-Pakistan slogans and resort to stone-pelting on the security forces. Through his vitriolic speeches, he would arouse strong anti-India feelings among the masses so that they are provoked to rise in armed rebellion against the Government of India.

17.5.8 He also used to visit the houses of killed militants and injured stone-pelters in the Kashmir Valley and provoked them to take up arms for the so-called liberation of Jammu and Kashmir. He was backed and supported by Pakistani agencies in this pursuit, as has been established from the oral testimonies and document seized from the house of Ghulam Mohammad Bhat, the cashier-cum-accountant of accused Zahoor Ahmad Shah Watali (A-10).

17.5.9 The document seized from the house of Ghulam Mohammad Bhatt, the accountant-cum-cashier of the Hawala conduit Zahoor Ahmad Shah Watali (A-10) shows that accused Masarat Alam (A-16), along with other accused persons, was also a recipient of funds which came from offshore locations for funding and fuelling secessionist and violent activities in Jammu & Kashmir. The said document shows him to have received an amount of Rs.10,00,000/- from accused Zahoor Ahmad Shah Watali (A-10) on 08.03.2015, indicating that accused Masarat Alam (A-16), along with other accused persons, was a part of the larger conspiracy to create unrest and wrest Jammu & Kashmir from the Union of India.

17.5.10 Accused Masarat Alam's (A-16) violent secessionist intent is also reflected by the incident which happened in April, 2015, when SAS Geelani returned from Delhi to Hyderpora, Srinagar and the Hurriyat party gave him a grand reception. At the end of the reception, SAS Geelani delivered his speech in favour of Pakistan; and accused Masarat Alam (A-16) coined a new slogan:

"Meri Jaan, Teri Jaan, Pakistan-Pakistan,
Geelani Sahab ka kyapaigam-Kashmir banega Pakistan,
Hafiz Saeed ka kyapaigam-Kashmir banega Pakistan,
Jeevayjeevaj Pakistan".

17.5.11 After the rally, accused Masarat Alam (A-16) instigated the mob to throw stones on security forces and vehicles plying on the road. The crippling impact of the violent agitations engineered by the secessionist elements on the lives of common masses can be gauged by the happenings of 2008, 2009 & 2010 when the entire valley was held hostage to the secessionist ideology of these leaders and other like-minded people. This fact has been corroborated by the oral testimonies and audio-video downloaded from the open source in which accused Masarat Alam (A-16) is chanting the above said slogans.

17.5.12 From the analysis of the videos downloaded from the open-source, it is evident that accused Masarat Alam was constantly trying to create 2010-style confrontations between the youth and the security forces at the instance of Pakistani agencies. Transcripts of some videos of accused Masarat Alam downloaded from the open source are as under:

- Sabse pahle mai aap sabko Mubarak badi pesh ka rraha hu ki aapne Bharat ki gulami

ke khilaf jo majamtsuru ki hai usme sidda tpaida hut hai, par aap ne apni mali or apni jani kurbani pesh karke Bharat ke avamo jaljala paida kiya hai. Aapko malum hai 65 saal se ye komgulami ki ek tavar zindgi gujar rahi hai.

- *Nara jo aapnelagayahai hum subnemilke quit Jammu Kashmir Bharat riyasi Jammu Kashmir se bedakhal ho jaya, wapischalajayeapnifoz ko le jaye, kyunki wo ek yahakasib ek kasib ki hasiyatrakhtahai.*
- *Sabse badi tarsi is chiz ki hai ki riyaste Jammu Kashmir Bharat ki gulami se Azad ho jaye, isliyeaap sab ne aajtakishtkamat ka mujahirakiyeisejari or sari rakhe, hum aapkoyakim se sathkahnachahenge ki allah ki nusrathamaresathhai, aapkimajamat ka joiokuwathai use Bharat jald se jaldyaha se wapsi ka faislatene par majboorhojayega.*
- *Jive Jive Pakistan, terijan meri jaan Pakistan-Pakistan, Hafissaeed ko kyapaigam Kashmir ko le jao Pakistan, Tero merakaarman Pakistan-Pakistan.*

In this regard, voice samples of accused Masarat Alam were obtained and reports of CFSL, CBI Delhi have confirmed his voice in the videos. These videos have affirmed the active involvement of accused Masarat Alam (A-16) in violent anti-India agitations and that he was at the fore-front in instigating the youth to resort to massive stone-pelting and attacks on Indian security forces and Indian establishment. His actions have had grave implications for the security of the State. More than 40 cases have been registered against him in last ten years for his involvement in unlawful activities and for such other actions which are prejudicial to the maintenance of peace and harmony in the society. Accused Masarat Alam (A-16) was a part of deep-rooted conspiracy hatched by the secessionist leaders and their Pakistan-based mentors, who have been vociferously advocating secession of Jammu and Kashmir from the Union of India and its merger with Pakistan.”

363. The charges have been framed against accused Masarat Alam for the offences under sections 120B IPC, 121 IPC, 121A IPC, 124A IPC, 13 UAPA r/w 120B IPC, 15 UAPA r/w 120B IPC, sections 17, 18, 20, 38 & 39 of UAPA on 16.03.2022. The relevant extracts from the order dated 16.03.2022 passed by Special Judge (NIA), Addl. Sessions Judge, Patiala House Courts, New Delhi whereby charges have been framed, are as under:-

“5.19 Then there is protected witness Bravo. He has been associated to accused Masarat Alam. He stated that in the year 2010, accused Masarat Alam started a campaign named, ‘Kashmir Chhodo Tehreek’. He released calanders for protest and released those programmes and in TV and Pamphlates in newspapers. According to those programs, protests were continued for months and the slogan was “hum kya chahte azadi”. He further stated that he himself had seen Masarat Alam chanting “teri jaan meri jaan Pakistan Pakistan.

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5.86 The above analysis reflects that the statements of witnesses and documentary evidence has connected almost all the accused with each other and to a common object of secession, to the commonality of means they were to use, their close association to terrorist/ terrorist organizations under the guiding hand and funding of Pakistani establishment. Witnesses after witnesses have deposed that APHC, its factions after division and JRL had only one object and that was the secession of J&K from the Union of India. Witness John has connected accused Shabir Shah, Yasin Malik, Zahoor Ahmad Shah Watali, Naeem Khan and Bitta Karate to APHC and JRL. Witness Gulf has connected Er. Rashid to Zahoor Ahmad Shah Watali who in turn is closely intertwined with APHC and Pakistani establishment agencies. Witness Bravo has connected accused Masrat Alam to Hurriyat. Witness Jack has deposed about the meeting of November 2016 held at the house of SAS Geelani. Then there is confessional statement of an accused according to which Masrat Alam was General Secretary in Hurriyat. Even otherwise none of these accused except accused Bitta Karate have denied having been associated or being a part of or being office bearer of either APHC(M)/APHC(G) /JRL/TeH. The documents AD-111/6 to AD-111/9, AD-111/10 to AD-111/12, D-7/al and D-7/a2 have disclosed about the constituents of Hurriyat and accused Nayem Khan being linked to and working in close concert with terrorist organizations. The role of accused Aftab Ahmad Shah (A-3), Altaf Ahmad Shah(A-4), Mohammad Akbar Khandey (A-7), Raja Mehrajuddinkalwal (A-8), Peer Saifulla (A-9) and accused Naval Kishore Kapur (A-13) has also appeared through documents and statements of witnesses as discussed above.

5.87 The above discussed evidence thus *prima facie* reflects an agreement between the accused, except accused 11, 12 and 17 to achieve an object common to all and the said object was secession of J&K from the Union of India. It also details the agreement about the means to be employed for achieving that object and the means employed such as violent protests, stone pelting, damaging and burning of property are *per se* illegal.

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10.28 Thus, discussion of evidence above *prima facie* establishes:-

(i) Money for terror funding was sent from and by Pakistan and its agencies and even the diplomatic mission was used to fulfil the evil design...

(ii) Money for terror funding was also sent by proclaimed international terrorist and accused Hafiz Saeed.

(iii) Accused Zahoor Ahmad Shah Watali was one of the main conduits for flow of this terror funding and accused Naval Kishore Kapoor had played an active part in facilitating it.

(iv) That accused Shabir Shah, Yasin Malik, Er. Rashid, Altaf Fantoosh, Masrat and Hurriyat/JRL were the direct recipients of this terror fund.

(v) That accused Peer Saifullah had funded, for Hurriyat, stone pelting an activity already *prima facie* found to be covered with in the definition of a terrorist act.

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13.8 **With regard to accused Masrat Alam (A-16), evidence which has been pressed into service in order to *prima facie* show that this accused had committed offences u/s 38, 39 and 40 UAPA is video AD-102.**

13.8.1 **It is a video wherein the accused is chanting slogans "Jeevejeeve Pakistan, terijaan meri jaan Pakistan Pakistan, Hafiz Saeed ka kyapaigam, Kashmir banega Pakistan.**

13.8.2 The moment the accused, who has considerable following, is chanting this slogan in public rally, he is associating himself to Hafiz Saeed and in turn with HM and when he asked the public to chant behind him this slogan, he furthers the cause of HM by asking people to follow the path shown by Hafiz Saeed and HM. Thus, *prima facie* it establishes the commission of offence u/s 38 UAPA by this accused.

13.8.3 When the accused is chanting this slogan in public, it appears that he is addressing a meeting for the purpose of encouraging support for designated terrorist Hafiz Saeed and in turn for his terrorist organization HM. The fact that the said slogan was chanted behind him by a large crowd reflects that his intention to muster support for HM had born fruit. Thus, *prima facie* charge for commission of offence u/s 39 UAPA is also made out against this accused.

13.8.4 For offence u/s 40 UAPA against this accused, no evidence has been brought on record by the prosecution.

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14.9 Against accused no. 16 Masrat Alam, in order to *prima facie* establish offence u/s 124A IPC, the prosecution has relied upon the statement of witness Bravo (AD-137/5), transcript of Youtube video which is AD-130/5 and AD-130/6.

14.10 The corresponding video has been watched by me in the pen drive provided and is in folder DVR Mark D dated 03.09.2019. Within this folder, there is a folder named Masrat Alarm and in that folder, this video is at number 15. **In this video, accused Masrat Alam on the face of it, is making an appeal to Indian Army to stop obeying the orders and leave Kashmir. However, indirectly this seems to be a clear case of incitement, hatred and disaffection towards government of India as by law established. In this video, he states that action of Indian military had killed 01 lac, caused the disappearance of 10000 and had orphaned 60000. He further states that they are against the terror of Indian State. He calls upon the Indian armed forces to participate in Civil disobedience. He further goes on to state that Indian army humiliated their women and elders, violated their**

children as they go to school, maimed their people with land mines and fake encounters, (made to) disappear, detain torture and murder (sic). For the entire time that this video plays images of protests, injured people covered in blood and other such images which could project India as a rapacious occupying force are played by the side. This video is not a discussion .It is not an advocacy for freedom of Kashmir. It is a video where apparently an effort is made to incite Indian Armed forces to disobey the orders and join Civil Disobedience. However, in reality, in this video, accused is projecting India and its Armed forces as a murderous occupation force which violates women, children and maims people and to increase the impact, gory pictures are played side by side. The intent therefore, is very clear and it is to incite people to develop hatred and contempt for a government whose forces have committed unthinkable atrocities upon them. It is also to be noticed that accused had succeeded in raising the sentiments of the people and has a following in valley and thus, this incitement cannot be accepted at this stage as a mere speech or rambling without any effect whatsoever. Thus, I find that prima facie there is evidence against the accused for framing charge u/s124A IPC. ”

364. Witness statements of Sh. Zahoor Ahmed Kana and Javed Ahmed Najar under Section 161 CrPC in the aforesaid NIA case, exhibited as Ex PW-7/7, corroborates that Masarat Alam has delivered anti-India and provocative speeches, and has coined the following slogan “Meri Jaan, Teri Jaan, Pakistan-Pakistan, Geelani Sahab ka kya paigam-Kashmir banega Pakistan, Hafiz Saeed ka kya paigam Kashmir banega Pakistan, Jeevay jeevay Pakistan”.

Relevant extracts of the said witnesses statements are as under:-

Statement of Sh. Zahoor Ahmed Kana, aged about 35 years son of Ghulam Rasool Kana, resident of Fateh Kadal, Rajdan Kochar (tiny tort School) Srinagar, recorded under section 161 CrPC.

“In the year 2015, I was called by friend Javed Ahmad in the rally organized by Hurriyat Conference at Hyderpora on the occasion of returning back of S A S Geelani, Chairman Hurriyat Conference(G I along with Javed Ahmad Nazar went Hederpora to attend the rally. That rally was attended by SAS Geelani, Chairman of APHC(G), Masarat Alam, Javed Ahmad and other leaders of Hurriyat Conference. In that rally pro-Pakistan and anti-Indian slogans such as "Teri Jan meri Jan Pakistan, Geelani Sahab ka kiyapaigam-Kahmir banega Pakistan, Hafiz Sayed ka kiyapaigam Kashmir banega Pakistan" etc were raised by Masarat Alam. I also chanted the same slogan behind Masarat Alam in that rally.”

Statement of Javed Ahmed Najar, aged about 35 years on Gulam Quadir Najar resident of Village Pathar Masjid, PSMR ganj, District Srinagar J&K recorded under section 161 CrPC

“In the year 1997, I joined Al-Fateh militant group and went to Pakistan for terrorist training. From the year 1997 to 1999, I remained active in the Handwara area. During one encounter, I got injured and come to Srinagar for treatment from where I was arrested. I was sent to KotBhalwal jail and released from the jail in the year 2005.

In the year 2002-03, I met with Masarat Alam in the Kotbhalwal Jail and discussed about the matter of freedom of Kashmir. In the year 2005, I again met with him in Uri and in that meeting he asked me to join the Muslim League Party. Since the ideology of Muslim league party was freedom of Kashmir and I was also having same ideology, so I accepted his proposal. I attended anti- Indian protests led by Masarat Alam, Mohamad Yousuf Mir and Abdul Ahad Para from the year 2005 to 2007. In these protests I also raised anti-Indian slogans with these leaders and hosted Pakistan Flags at various places. Masarat Alam was strong supporter of Pakistan and he used to motivate the youths of Kashmir for taking part in the anti-Indian processions and rallies. In the year 2010, Masarat Alam started one "Quit Kashmir Movement and issued calendars of protest. That time he remained underground but he used to issue calendars of protest through newspapers. On the call of Masarat Alam, youths of Kashmir valley started stone pelting on the security forces. In these protests near about 100 people died in clashes between stone pelters and security forces.

During the year 2015 I visited the house of Masarat Alam after he returned from the jail. After few days Masarat Called me and asked that S A S Geelani is returning from Delhi and asked to come along with him to attend the rally organized by the Ferez Khan resident of Pulwama at Hurriyat Office, Hyderpora. I along with Janoor Ahmad Kuna went Hyderpora to attend the rally that rally was attended by SAS Geelani, Chairman of APHC(G), Masarat Alam, Javed Ahmad and other leaders of

HumigatConfentice. In that rally pro-Pakistan and anti-Indian slogans such as "Teri Jan meri Jan Pakistan, Geelani Sab ka kiyapaigam Kahmir banega Pakistan, Hafiz Sayed ka kiyapaigam Kashmire banega Pakistan" etc were raised by Masarat Alam. I also chanted the same slogan raised by Masarat Alam in that rally."

365. Furthermore, the statement of protected witness (Bravo) in NIA case also brings out the secessionist activities of Masarat Alam, the chief protagonist of the association.

366. Crucially, the chargesheet filed by the NIA also includes videos recovered by the NIA showing secessionist speeches delivered by Masarat Alam, the chief protagonist of the proscribed association. The report of CFSL, CBI Delhi had confirmed that the voice in the videos is of Masarat Alam. The nature of the activities of the concerned association becomes clear from the perusal of the said speeches. The relevant extracts of the videos, which are also pointed out in the NIA chargesheet, are as under:-

<u>S. No.</u>	<u>Name of document & Original Exhibit No.</u>	<u>Particulars</u>		<u>Page</u>
		<u>Video Name</u>	<u>Transcript</u>	
1.	Sony DVD-R marked "D" containing 33 videos downloaded from open source (social media) showing Masarat Alam reciting antinational speeches. Transcripts of 12 videos available and reproduced. Said 12 Samples confirmed in CSL to be voice of Masarat Alam. (pg. 194)	1_MASART ALAM ADDRESSING PEOPLE OF KASHMIR	<p>0:23- "Sabse pehle mai aap sabko Mubarabadi pesh kar raha hu ki aapne Bharat ki gulami ke khilaf jo majamt suru ki hai usme siddat paida hui hai, par aapne apni mali or apni jani khurbani pesh karke Bharat keevamo me jaljala paida kiya hai. Aapko malum hai 65 saal se ye kom gulami ki ek tavar zindagi gujar rahi hai"</p> <p>1:28- "Nara jo aapne lagaya hai hum sabne milke quit Jammu Kashmir, Bharat riyasi Jammu Kashmir se bedakhal ho jaye, wapis chalejaye apni foz ko le jaye, kyunki vo ek yaha Kasib ek Kasib ki hasiyat rakhta hai"</p> <p>3:05- "Sabse badi tarsi es chiz ki hai ki riyaste Jammu Kashmir Bharat ki gulami se Azad ho jaye, isliye aap sab ne aaj takisht kamant ka mujahira kiya ise jari or sari rakhe, hum aapko yahin ke sath kahna chahenge ki allah ki nusrat hamare sath hai, aapki majamat ka jo loka wathai use Bharat jald se jaldyaha se wapsi ka faisla lene par majboor hojayega."</p>	Pg. 170-180, NIA Affidavit.
		2_Kashmiri Leader Masarat Alam Bhat Pakistan k naraylagatayhuay	0:24- "Jive Jive Pakistan, terijan meri jaan Pakistan-Pakistan, Hafissaeed ka kya paigam Kashmir ko le jao Pakistan, Tera mera kya arman Pakistan-Pakistan."	
		8_Islam ka Bol Bala	"Is riyasat me Islam ka kya bolbala ho, riyasat bharat ki gulami se azaad ho or hum milat ka hissa bane, hum is mauke pe mamlekhati khudakati Pakistan ki salamti ke liye bhi dua karenge or unke waha se kehukmano pe jor dekrke bhi gujarish pesh karenge ki wo riyase Jammu Kashmir ke hawale se jo kaydajamrehmatulah ka maukaf hai ki Kashmir Pakistan ki sahraghai, uspe kaim or gahim rahe. "	
		12_Masrat Alam's Appeal to	0:30- "Aaj mai chand gujrisat aapki khidmat me pesh karna chahunga, Tarikh	

		people of Kashmir	<i>is baat ki sahi dhai ki ajimmaksid ki hokum ke liye ajjmurbaniyamaksulhua kerti hai. Jo kokiyatajim kurbaniya deti rehti hai unhe allahajim kamyabi me makahadah karta hai. Siyasi Jammu Kashmir ki aavam piclre 60 saal se Bharat ki ek tabilgulami me mukta hai, is gulami ki wajah se yaha bade amraz paida ho chuke hai, humne lokho ki bastiyo ko irane me tadbel kiya gaya, hazaro jo jawan gayab kardiye gaye hai, yaha sukoon gayathua hai, hazaro ki tadaad me jawazashire ki zindagi gujar rahe hai, karharkisiatibar se hamare liye suranhu bani hui hai ye gulami, liyaza is gulami ke ikhtatam ke liye, is kom me jisko mkejischna ka jis inkalab ka aayab kiya hai hume, use anjam tak pahuchne taksabit kami ka mujahera karna hog, ajim kurbaniya deni hogi jo hum de rahe hai, humne chand roj pehle no sala bacha bhidiya hai, humne 25 saal ki ek beti ko bhi pesh kiya hai, lekin is kurbani in jajbat is jajbe ko takmel tak pahuchane ke liye sabit kabdmi ki jarorat hai. Allah ne kuran e mukdas me farmaya hai jo log yakinn allah ko ejbante hai unhe sabit karmi ka mujahera karna chahiye, unhe ajmaya jayega, unhe masarit me uljhaya jayega lekin jo surkharunnik lenge jo ajbe karega. Aapne khubani di hai aapne apne lktahejigar diye hai, aapne apne malig kurbaniya di hai, aapne apne jaane kurbaniya di hai ya allah is kirakhwalikarna, is kidekhrekhkarna koi rajandakahna dale.”</i>	
		13_Masarat Alam satisfied that he can now free Jammu and Kashmir.	<i>To jab takriyasi Jammu Kashmir gulam hai tab tak jail aanajana rahega to is it manan k esath hum chorai jail me the ab badi jail me aaye hai to yaha hum kaam kar sakte hai majamat kar sakte hai, is gulami ki janzir ko katne ke liye apni koshish kar sakte hai. Ye sisasatkar rahi hai to unko samajhna chahiye riyasat jammu Kashmir ke jo log hai yaha ki galibaksriyat jo hai wo Hindustan ke sath nahi rehna chati hai to is silsile me log jail jate hai aate hai to ye koi masla nahi hai.”</i>	
		15_Masarat Alam Slogan Kashmir Banega Pakistan after Jail.	0:6- <i>“Teri jaan meri jaan Pakistan Pakistan, Hafiz Saeed ka kya paigam Kashmir Banega Pakistan, Tera mera kya arman Pakistan Pakistan.”</i>	
		16_YouTube Appeal to Indian soldiers APHC G Masarat Alam Bhat	<i>This is an appeal to all soldiers of the Indian Army forces we appeal to you on behalf of people to quit Jammu and Kashmir & not participate in the ductility and subjugation of Indian Militancy occupation. We appeal to you to land</i>	

	DAT.	<p><i>solidarity to the people of Jammu and Kashmir for Jammu Kashmir's right full determination and right of the Jammu Kashmir people to be free. We call on your conscious to end the long chapter of deception tairayni and death. Your action killed one lakh, disappeared 10 thousand, and orphaned 60 thousands. You thought your violence would kill our dreams for freedom. This has not your thought our spirit will break. We would turn against each other we will not. You have succeeded in murder but not in death our dreams.</i></p> <p><i>Before more violence before more sorrow before more grievances we ask you stop. Our rich and resided culture we are a proud people whose hostility has define our history. We welcomed guests invited and uninvited not invaders. We understand you are deception your psychological warfare. You will be tired killing us. Somebody unite be horrified but you have done humanity. We will never tire of struggling our history for our future for our freedom we cannot forgive we will not forgive. You have said to the world that majority of Jammu Kashmir muslims are against hindus that muslims are terrorist we are not. We against the Indian state terror and in solidarity with all who oppose violence and repression. We appeal to you to participate in severe disobedience against the orders of Indian armed forces and the GOI that make you brutally our men our women our children. That ask you to occupy our lands, deny our freedom of movement barricade our roads despoil our environment control our resources, police our border, humiliate our women and elders and violate our children as they go to school, maim our people with land mines and fake encounters, disappear, detain, torture and murder. We ask that you stop we ask that you look into yourself to look in your history where you to know operation.</i></p> <p><i>We ask you choose justice choose freedom.</i></p> <p><i>We ask that you stop the daughters are and sons of Jammu Kashmir ask you this enezry go back home take care of your destitute hungry your needy same life at home, stop destroying life through your war on Jammu Kashmir. Quit Jammu Kashmir.</i></p> <p><i>Ye vo message hai appeal hai, hamari taraf se kulzama ki Hurriyat conference ki taraf se, riyasat majlum aavam ki taraf se un foziyo ke liye jo bharat ke nazayaz kabje ko tavam bakshne karenge ki job hi</i></p>	
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			<p>duniya me janhabhi Kashmiri rahte hai wha ki jo Indian embassies hai ya unke consulates hai waha jakar appeal unhe pesh karde or yaha bhi janha mauka mile bade khuba karandaz me bade discipline ke sath bade nazam ke sath ya habhiins ko pesh kiya jaye. Hum jarayevalat ki vaksat se is eishaya karte h or hum koshish karenge ki aavam tak bhi iski copiya pahuch jaye, Hum jaraye valet se vabst aapne dosto se gujarish karenge ki is document ki meanvabarati ke jariye, apni channels ke jariye apne lay enasiriyt ke jariye naksatkare puri duniya me is chiz ka pahuchaya jaye aur un sathiyo se bhi un nazam se bhi meri gujarish hogi ji internet ka istemaal karte hai ki wo internet kejariye se is document ko aavam kare. Ye quit Jammu Kashmir ki jo Tehreek hai Jammu Kashmir chod do uske liye yaha hamari taraf se appeal hai bharat ke fojion ke liye mujhe umeed hai ki ise un tak pachuchaya jayega janhabhi mauka mile taki unka ehsasun kazameer unhe jhinchode unhe is chiz ke sochne pe majboor kare ki vowakai ek najayz ko dava baksh rahe hai. Wo nihthe logo pe goliya barsa rahe hai. Vo Jayazhuqub ki bajyabi ke liye jadajuhat karne walo pe maxazalim dah rahe hai jispe vo koi karahi numayaanjam nahi de rahe hai balki Tahreek ae avrat me apne liye si ahavrathasil kar Rahe hai or apani komoe apne Mulak ke liye Tarikh me ek jamil or javir ki hasiyat se jugah de rahe hai hume umeed hai ki prevail and Indians would consider. They will take serious this appeals from ours will force Quit Jammu Kashmir.”</p>	
		17_Not worried against FIR Raised- Masarat Alam Flag	<p>0:50- “Dekhiye yaha logo ke jaibat Pakistan ke sath vadbasta hai to unhone Jhandde lah raye honge to isme kya hai ye konsa jurm hai, ye koi jurm nahi hai yaha logo ke jaibat aise ho rahe hai 47 saal se aisa hota jar raha hai, pehli baar nahi yaha ki jaezamin pe Pakistan ka jhhanda lah raya ho. Mere khilaf bahut sari FIR hai ek or sahi.”</p>	
		21_Hurriyat did not wave Pakistani flag, some boys did it- Masarat Alam.	<p>0:51- “Jammu Kashmir sirf Bhartiya intjamiya ko rahne ka haq nahi hai, hum yaha aake bhashan de ye hamari sarjaminein hai ye hamari riyasat hai, yaha un logo ko rakhne ka haq nahi hai jo bharat ki boli bolte hai.”</p>	
		22_Masarat Alam Denies waving Pakistan Flag.	<p>0:40- “yaha ke logo ke jaibat hai ahsasat hai, jaisa maine pahle bhi kaha tha ki yaha jo bharat ke jo alakayadriti ki usme yaha ke logo ke se wada kiya hai ki hum aapko mauka denge ki aap hamare sath rahna chahengeya Pakistan ke sath jana chahenge, ki ye 47 se yaha jajba hai to usi jajbe ko dekar Pandit Jawaharlal</p>	

			<i>Nehru ne aisa kaha tha to Parliament me kaha tha UN Resolution iski gawah hai puri duniya ke samne apne is chiz ke sath signatory hai aap, logo se pucha jayega ki wo Hindistan ke sath rehna chahengeya Pakistan ke sath, jab tak ye jaiba hai hamesha Pakistan ka nara lagta raha hai, lagta rahega."</i>	
		27_Seperatist Leader Masarat Alam's harted for India.	1:01- "Ajaadi chate hai, hum bharat ke Jali, anaja birana kabje ke khilaf hai, hum b[kabhi bhi Bharat ko chod rahat ko taslim karne wale nahi hai chahe hamari jaan chal ijaye." 6:00- "Hoshiyar rahna hogा aapne khabardar rahna hogा, hum yahi khwawish karenge hum yahi gujarish karenge ki jo programme jo Calender kuljamti Hurriyat ki ab tak conference ki janib se aapke samnepesh ho use mirn kabool karke kamyabb naye, hum aap se vadman hai, ki hum is garm garm lahu kea min hai hum in kurbaniyo kea min hai, hum khud nakisi or ko in kurbaniyo ke sath bewafai ke ijat denge."	
		30_Waving Pak Flag. Centre asks Kashmir Govt. to re-arrest Masarat Alam after Geelani rally.	8:55- "aapka sawal tha ki kal aapne lehraya hai, maine khud nahi lehraya hai ye hakikat hai lekin logo ne lehraya mai isko jayaz samajtha hu. Reporter said "Aage bhi kafi sari rallies hogi kya aap ko lagta hai aapko unme agar aapko mauka mile aap unme Pakistan flag fir se lehrayenge ya Pakistan slogans denge?" Masarat said "dekhijiye ye logo ka kaam hai jhhande lehrana vagerah to wo logo pe aap chodd dijiye, lekin ye pehli baar nahi aisa hota raha hai, aisa ho tera hega."	

367. The aforesaid videos recovered by NIA, were also submitted to this Tribunal in a pen drive. The speeches of Masarat Alam, the chief protagonist of the proscribed association, vociferously advocates and endorse the separation of J&K from territory of India and its secession from the Union of India, and further instigate/provoke youth and groups to take actions towards this object. In the said speeches the sovereignty and territorial unity of India has been sought to be seriously undermined, feelings of discontent/disaffection towards India have been sought to be provoked.

368. The supplementary chargesheet dated 04.10.2019 filed in NIA No. RC-10/2017/NIA/DLI also mentions that Masarat Alam was receiving funds from Pakistan through hawala conduit, which is substantiated by a document seized from the house of Ghulam Mohammad Bhat, the accountant-cum-cashier of co-accused Zahoor Ahmad Shah Watali. The said document shows accused Masarat Alam having received an amount of Rs. 10,00,000/- on 08.03.2015 from Hawala conduit Zahoor Ahmad Shah Watali. This is also corroborated by the complaint ECIR/03/DLZO-II/2017 filed by the Enforcement Directorate against Masarat Alam under Prevention of Money Laundering Act. The relevant extract from the supplementary chargesheet filed by the NIA is as under:-

"17.5.9 The document seized from the house of Ghulam Mohammad Bhatt, the accountant-cum-cashier of the Hawala conduit Zahoor Ahmad Shah Watali (A-10) shows that accused Masarat Alam (A-16), along with other accused persons, was also a recipient of funds which came from offshore locations for funding and fuelling successionist and violent activities in Jammu & Kashmir. The said

document shows him to have received an amount of Rs.10,00,000/- from accused Zahoor Ahmad Shah Watali (A-10) on 08.03.2015, indicating that accused Masarat Alam (A-16), along with other accused persons, was a part of the larger conspiracy to create unrest and wrest Jammu & Kashmir from the Union of India.”

369. In affidavit filed by ED, it has been brought out that Zahoor Ahmad Shah Watali was receiving funds from Hafiz Saeed/ISI for onwards remittance to Hurriyat leaders including Masarat Alam with the purpose of distribution among those for stone pelting on the security forces and to promote lawlessness and violence in J&K with a larger intention to secure secession of J&K from India. It is further mentioned that in the statement recorded under section 50 of PLMA dated 26.02.2022, Masarat Alam refused to comment on the aforesaid transaction, thereby failing to discharge burden of proof under Section 24 of PMLA. This allegation suggests Masarat Alam's involvement in promoting unrest and violence in the region.

370. The contents of the aforesaid chargesheet filed by the NIA; the recoveries referred to therein, the statements of the accused persons as referred to therein; complaint files by the ED; all give an insight as to the activities of MLJK-MA/ its members, the nexus thereof with nefarious elements from across the border, and substantiates the conclusions drawn in the notification dated 27.12.2023 issued under Section 3(1) of the UAPA.

371. This Tribunal is conscious that the veracity of the contents of the aforesaid chargesheet/s filed by NIA and complaint filed by ED, is required to be established at trial in the said cases. However, for the purpose of these proceedings, the said evidence is in the nature of relevant material and liable to be considered, in terms of the dicta laid down by the Supreme Court in *Khatri* (supra) and *Jamaat-e-Islami Hind* (supra). As mandated in terms of the judgment of the Supreme Court in *Jamaat-e-Islami Hind* (supra), this tribunal has examined the material cited by the Central Government for the purpose of making an “objective assessment” for the purpose of these proceedings and to assess whether the same supports the declaration made under Section 3(1) of UAPA vide the notification dated 27.12.2023.

372. Further, I have also perused the intelligence/confidential reports which are part of the sealed envelope submitted by PW-19 alongwith his evidence. As noted aforesaid, the disclosure thereof would be detrimental to the larger public interest and security of the State. In the circumstances, this Tribunal has allowed submitting of the said documents in a sealed cover. These documents give comprehensive insights and details as to the unlawful activities and separatist endeavours of MLJK-MA, carried out in intimate collaboration with anti-India factions in Pakistan. The efforts to foster the separation of J&K from India, to subvert the sovereignty of India, to inflame local sentiments, and to propagate violence are elucidated in the said materials/documents.

373. Thus, the Central Government has been able to make out a cogent case in support of impugned notification dated 27.12.2023 for declaring the association i.e. MLJK-MA as banned association. The evidence adduced by the Central Government *inter alia* comprises (i) evidence of 15 officers from the State of Jammu and Kashmir, who have deposed in respect of more than 35 FIRs against the chief protagonist of the association and other members, on account of his various incidents/actions as referred to hereinabove; (ii) Evidence in the form of investigation conducted in NIA No. RC-10/2017/NIA/DLI which has been set out in the detailed chargesheet filed by the NIA. Charges have also been framed by the concerned NIA Court pursuant to the said chargesheet vide order dated 16.03.2022; (iii) Evidence in the form of affidavit filed on behalf of the ED showing that Masarat Alam has received foreign funds from anti-India elements; (iv) Evidence in the form of videos containing speeches rendered by Masarat Alam, the chief protagonist of the association which brings out the secessionist agenda of the association and the fact that the association has sought to seriously undermine the sovereignty and integrity of India. (v) Evidence in the form of intelligence reports/memo furnished by the security agencies regarding the activities of the association, with precise

details as to the inimical and unlawful activities.

374. As opposed to this, the association has miserably failed to adduced any evidence to rebut the voluminous evidence/material placed on record by the Central Government despite elaborate opportunities afforded to it. I have already noted the relevant factual background regarding the failure on the part of the association to adduce any evidence, and instead seek to wrongly take refuge behind unsubstantiated allegation/s regarding detention of its witnesses as the reason for the same.

Conclusion

375. From the elaborate material/evidence placed on record in these proceedings, this Tribunal finds that there is ample justification to declare MLJK-MA as an unlawful association under the UAPA. Moreover, given the nature of activities of the association, the Central Government was justified in taking recourse to the proviso to Section 3 (3) of the UAPA.

376. In the framework of the Indian Constitution and the UAPA, there is no space for an association like the MLJK-MA which openly propagates secessionism and undermines the territorial integrity and sovereignty of India.

377. Thus, this Tribunal having followed the procedure laid down in the UAPA and its Rules and having independently and objectively appreciated and evaluated the material and evidence on record, is of the firm and considered view that there is sufficient cause for declaring MLJK-MA as an unlawful association under Section 3(1) of the UAPA, 1967, vide the notification dated 27.12.2023. Thus, an order is passed under Section 4 (3) of the UAPA, 1967 confirming the declaration made in the notification bearing no. S.O. 5462(E) published in the official gazette on 27.12.2023 issued under Section 3(1) of the UAPA, 1967.

**(JUSTICE SACHIN DATTA)
UNLAWFUL ACTIVITIES (PREVENTION) TRIBUNAL**

JUNE 22, 2024"

[F. No.14017/47/2024-NI-MFO]
ABHIJIT SINHA, Jt. Secy.